IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 51

DAVID H. SCULL,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA EX REL. COMMITTEE ON LAW REFORM AND RACIAL ACTIVITIES,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

BRIEF FOR PETITIONER

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CASES

CONSTITUTIONAL PROVISIONS AND STATUTES

MISCELLANEOUS

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Opinions Below

The opinions, judgments and orders of the Supreme Court of Appeals of Virginia and the Circuit Court of the County of Arlington in this case are unreported; they appear at R. 57-58, 86-87, 100-101, 107-108, 111-112.

Jurisdiction

The judgment of the Supreme Court of Appeals of Virginia denying a petition for writ of error was entered on January 20, 1958. Certiorari was granted by this Court on June 9, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

Question Presented

In 1956 the Virginia Legislature established the Thomson "Committee on Law Reform and Racial Activities" as part of its program of resistance to school integration. Petitioner was called before the Committee in the course of an investigation described by its Chairman as one to "bust" the NAACP "wide open". Petitioner refused to answer the Committee's questions asking him to reveal his association with the NAACP and various civic, political and religious organizations, for which refusal he was convicted of contempt and sentenced to imprisonment.

The question presented is whether the compelled interrogation of petitioner before a Virginia "racial activities" investigating committee, concerning his association with the NAACP and other civic, political and religious organizations, deprived petitioner of constitutionally-protected liberties.

Constitutional Provisions and Statute Involved

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourteenth Amendment to the United States Constitution provides in part:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Chapter 37 of the Acts of the General Assembly of the Commonwealth of Virginia, Extra Session 1956, establishing the Committee on Law Reform and Racial Activities, provided:

An Act to create a legislative committee of the House and Senate to investigate and hold hearings relative to the activities of corporations, associations, organizations and other groups which encourage and promote litigation relating to racial activities; to provide for the organization, powers and duties of said committee; to provide for hearings; to authorize said committee to issue subpoenas and require testimony; to provide for application to court for an order requiring any person to appear and testify who fails or refuses to do so; to provide for witness fees; to provide for employment of a clerical and investigative force by the committee; to provide for payment of expenses; to appropriate funds for use of the committee; to provide that the Attorney General or other legal counsel shall represent said committee; and for other purposes.

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. There is hereby created a Legislative Committee, to be composed of six members of the House appointed by the Speaker thereof, and four members of the Senate appointed by the President thereof.

§ 2. The Committee is authorized to make a thorough investigation of the activities of corporations, organizations, associations and other like groups which seek to influence, encourage, or promote litigation relating to racial activities in this State. The Committee shall conduct its investigation so as to collect evidence and information which shall be necessary or useful in

(1) determining the need, or lack of need, for legislation which would assist in the investigation of such organizations, corporations and associations relative to the State income tax laws;

(2) determining the need, or lack of need, for legislation redefining the taxable status of such corporations, associations, organizations and other groups, as above referred to, and further defining the status of donations to such organizations or corporations from a taxation standpoint; and

(3) determining the effect which integration or the threat of integration could have on the operation of the public schools in the State or the general welfare of the State and whether the laws of barratry, champerty and maintenance are being violated in connection therewith.

§ 3. Said Committee may hold hearings anywhere in the State, and shall have authority to issue subpoenas, which may be served by any sheriff or city sergeant of this State, or any agent or investigator of the Committee, and his return shown thereon, requiring the attendance

of witnesses and the production of papers, records and other documents. If any person, firm, corporation, association or organization which fails to appear in response to any such subpoena as therein required, or any person who fails or refuses, without legal cause, to answer any question propounded to him, then upon the application by the Chairman, or any member of the Committee acting at his direction, to the circuit or corporation court in the county or city wherein such person resides or may be found, such court shall issue an order directing such person to appear and testify. The Committee may, at its option, compel attendance of witnesses or production of documents by motion made before the circuit or corporation court having jurisdiction of the person or documents whose attendance or production is sought. The court upon such motion shall issue such subpoenas, writs, processes or orders as the court deems necessary. The Chairman of the Committee, or anyone acting at his direction, shall be authorized to administer oaths to all witnesses and to issue subpoenas. Every witness appearing pursuant to subpoena shall be entitled to receive, upon request, the same fee as is provided by law for witnesses in the courts of record in the State, and where the attendance of witnesses residing outside the county or city wherein the hearing is held is required, they shall be entitled to receive the sum of seven dollars after so appearing, upon certification thereof by the Chairman to the State Comptroller.

§ 4. Each member of the Committee shall receive, in addition to actual travel expenses, the same per diem as received by members of other legislative committees, while engaged in official duties as a member of said Committee.

§ 5. Said Committee shall be authorized to employ a clerical force and such investigators and other personnel as it may deem necessary to carry out the provisions of

this act, and may expend moneys for the procuring of information from other sources.

§ 6. The Attorney General shall assist the Committee upon request, and the Committee may engage such other legal counsel as it shall deem necessary.

§ 7. The Committee shall complete its investigations and make its report, together with any recommendations as to legislation, to the Governor and the General Assembly not later than November one, nineteen hundred fifty-seven.

2. There is hereby appropriated from the general fund of the State treasury the sum of twenty-five thousand dollars to carry out the purposes of this act.

Statement

Petitioner has been sentenced to fine and imprisonment for his failure to answer thirty-one questions [1] before a Committee of the Virginia Legislature investigating organizations seeking "to influence, encourage or promote litigation relating to racial activities." Evaluation of petitioner's refusal to answer requires examination of the legislative history surrounding the establishment of the Committee, as well as the nature and circumstances of his interrogation:

1. *The Legislative Background*

Shortly after this Court's 1954 decision in *Brown* v. *Board of Education*, 347 U.S. 483, Virginia undertook a program of "massive resistance" to school integration. On August 30, 1954, the Governor appointed a commission to examine the effect of the *Brown* decision. On November 11, 1955, the commission submitted its final report to the

[1] These questions appear as *Appendix A, infra*, p. 39.

Governor, recommending a special session of the General Assembly and a constitutional convention, for the passage of legislation and a constitutional amendment conferring broad discretion upon Virginia school authorities to assign pupils and use state funds for the prevention of integration.

On February 1, 1956, shortly after this report, the General Assembly adopted an "interposition resolution", stating in part as follows:

> "That by its decision of May 17, 1954, in the school cases, the Supreme Court of the United States placed upon the Constitution an interpretation, having the effect of an amendment thereto, which interpretation Virginia emphatically disapproves; * * *
>
> "That with the Supreme Court's decision aforesaid and this resolution by the General Assembly of Virginia, a question of contested power has arisen: The court asserts, for its part, that the States did, in fact, in 1868, prohibit unto themselves, by means of the Fourteenth Amendment, the power to maintain racially separate public schools, which power certain of the States have exercised daily for more than 80 years; the State of Virginia, for her part, asserts that she has never surrendered such power;
>
> "That this declaration upon the part of the Supreme Court of the United States constitutes a deliberate, palpable, and dangerous attempt by the court itself to usurp the amendatory power that lies solely with not fewer than three-fourths of the States; * * *
>
> "[That Virginia] anxiously concerned at this massive expansion of central authority, * * * is in duty bound to interpose against these most serious consequences, and earnestly to challenge the usurped authority that would inflict them upon her citizens. * * *

"And be it finally resolved, that until the question here asserted by the State of Virginia be settled by clear Constitutional amendment, we pledge our firm intention to take all appropriate measures honorably, legally and constitutionally available to us, to resist this illegal encroachment upon our sovereign powers, and to urge upon our sister States, whose authority over their own most cherished powers may next be imperiled, their prompt and deliberate efforts to check this and further encroachment by the Supreme Court, through judicial legislation, upon the reserved powers of the States."

On August 27, 1956, the General Assembly was convened by the Governor in an Extra Session to pass anti-integration legislation. The Governor stated in his opening address to the Session:

"The people of Virginia and their elected representatives, are confronted with the gravest problems since 1865. Beginning with the decision of the Supreme Court of the United States on May 17, 1954, there has been a series of events striking at the very fundamentals of constitutional government and creating situations of the utmost concern to all our people in this Commonwealth, and throughout the South.

"Because of the events I have just mentioned, *I come before you today for the purpose of submitting recommendations to continue our system of segregated public schools . . .*" (emphasis supplied).

"The principal bill which I submit to you at this time defines State policy and governs public school appropriations accordingly . . ."

"Manifestly, integration of the races would make impossible the operation of an efficient system. By this

> proposed legislation, the General Assembly, properly exercising its authority under the [Virginia] Constitution, will clearly define what constitutes an efficient system for which State appropriations are made."

In response to this appeal the Assembly enacted a series of bills, including a pupil assignment plan,[2] provisions for the discontinuance of state funds to integrated schools, and, as part of a package of "anti-NAACP bills",[3] the law establishing the investigating committee before which petitioner was called.

2. *Establishment of the Thomson Committee*

On the same day that it approved the school bills, the Assembly passed a package of "anti-NAACP bills," the last of which created the "Committee on Law Reform and Racial Activities" commonly known as the "Thomson Committee" for its sponsor and Chairman, Delegate Thomson. The Act creating the Committee empowered it

> "to make a thorough investigation of the activities of corporations, organizations, associations and other like groups which seek to influence, encourage or promote litigation relating to racial activities in this State."

To that end, the Committee was directed to collect evidence necessary to determine (1) the need "for legislation which

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[2] The pupil placement law was held unconstitutional. *Atkins* v. *School Board*, 148 F. Supp. 430, *aff'd*, 246 F. 2d 325, *cert. den.*, 355 U.S. 855.

[3] Chapters 31 to 37 of the Acts of the General Assembly, Extra Session 1956, Code of Virginia §§ 18–349.9 *et seq.*, 18–349.17 *et seq.*, 54–74, *et seq.*, 18–349.25 *et seq.*, 18–349.31 *et seq.*, and 30–35 *et seq.* They establish in the area of racial activities and racial litigation, registration requirements (Chapters 31 and 32), criminal penalties (Chapters 33, 35, 36) and another investigating committee, the "Boatwright Committee" (Chapter 34). Three of these measures were held unconstitutional in a decision of a three-judge court in *NAACP* v. *Patty*, 159 F. Supp. 503, Statement of Jurisdiction pending, No. 127, October Term, 1958.

would assist in the investigation of such organizations . . . relative to the State income tax laws", (2) the need for legislation "redefining the taxable status" of such organizations and of donations to such organizations, and (3) "the effect which integration or the threat of integration could have on the operation of the public schools in the State or the general welfare of the State and whether the laws of barratry, champerty and maintenance are being violated in connection therewith." Chairman Thomson subsequently testified that, to the best of his knowledge, "this is the first legislative investigating committee operating outside of the regular session or a session of the Legislature ever created in Virginia" (R. 28).

Mr. Thomson is, by his own statement, "the leading supporter of segregated schools in Northern Virginia" (R. 36), at least among elected officials. Both prior to and after the establishment of his Committee, Chairman Thomson made public statements that its investigations would be "devastating to the NAACP," would "bust that organization wide open" and "could be used to keep the NAACP out of litigation, which is the heart of the organization" (R. 34-36). Shortly after its establishment in September of 1956, the Committee initiated investigations and hearings in various Virginia localities. In its hearings the Committee called "around one hundred" witnesses concerning the NAACP and only one other witness, whose testimony concerned the "Defenders of State Sovereignty" (R. 23-25).

3. *Petitioner's Interrogation*

On September 19 and 20, 1957, the Committee held hearings in Arlington, Virginia. Petitioner and a number of other persons were interrogated pursuant to subpoena and "in every regard they were questioned on some phase of racial integration" (R. 17). Petitioner was subpoenaed

to appear before the Committee on September 20, 1957, because of unverified allegations appearing in a printed pamphlet entitled "The Shocking Truth" (R. 84) emanating from the "Fairfax Citizens' Council," an organization about which the Committee had no information (R. 19-20, 32-33). The pamphlet alleges a relationship between petitioner's Post Office box in Annandale, Virginia, and a number of organizations such as the NAACP, the B'nai B'rith, the American Friends Service Committee, and the Fairfax Federation of PTAs.

At the outset of the Committee hearing, petitioner requested to be informed of the "question under inquiry", whereupon the Chairman simply rephrased the authorizing language in terms even more vague than those of the statute itself.[4] Thereupon petitioner was asked a series of questions relating to his membership in, and the use of his mailbox by, various civic, political and religious organizations, including the Fairfax County Council on Human Relations, the NAACP, the American Civil Liberties Union, the Americans for Democratic Action, the American Friends Service Committee, the National Conference of Christians and Jews, the B'nai B'rith and like organizations (R. 76-82; *Appendix A, infra*, p. 39). He was asked to reveal whether his mailbox had been "used" by Miss Caroline H. Planck or Mrs. Barbara Marx, persons active in Arlington race relations work; Dr. E. B.

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[4] "CHAIRMAN THOMSON: The subjects under inquiry by the Committee, Mr. Scull, are three-fold:

One—several which primarily do not deal with you, but I will nonetheless state all three—the tax-exempt or tax status of both racial organizations in Virginia and the contributions made to such organizations—that is, the taxable status of them.

The integration or threat of integration on the public school system of Virginia, or the general welfare of Virginia.

The third one deals with the violation of certain statutes which are designed to prevent champerty, barratry, and maintenance, or the unauthorized practice of the law" (R. 73).

Henderson, leader of the Virginia NAACP; Mr. Warren D. Quenstedt, Democratic Candidate for Congress in the 1956 election; and Mr. E. A. Prichard, Fairfax attorney and Vice President of the Virginia Council of Churches. Petitioner refused to answer all these questions, as well as questions concerning involvement in "racial litigation," on the grounds, among others, that they infringed upon his rights under the Federal Constitution (R. 74-75).

4. *Enforcement Proceedings*

Following petitioner's refusal to answer and pursuant to the procedure provided by the Virginia statute, petitioner was ordered to show cause before the Circuit Court of Arlington County why he should not be compelled by judicial order to answer the Committee's questions.

i. At the hearing on the show cause order on October 15, 1957, the only witness was Chairman Thomson, who related petitioner's refusals to answer Committee questions. On cross-examination, Mr. Thomson affirmed that he had publicly stated his investigation would be "devastating to the NAACP," would "bust that organization wide open" and "could be used to keep the NAACP out of litigation, which is the heart of the organization" (R. 34-36). When asked whether the Committee had investigated any groups other than the NAACP, he stated that it had investigated the "Defenders of State Sovereignty," but conceded that there had been "only one" witness from that organization as contrasted to "around one hundred" concerning the NAACP (R. 25).

ii. Chairman Thomson conceded that the Committee had no published rules whatever and the only unpublished rules he could recall concerned the definition of a quorum and a provision for reporting the Committee's proceedings (R. 14). He affirmed that petitioner had been called because

of unverified allegations by the Fairfax Citizens' Council (concerning which he had no information) appearing in the pamphlet "The Shocking Truth" (R. 19-20, 32-33) and justified this action by volunteering that he even used "anonymous telephone calls to begin an investigation with" (R. 20). He defended the questions addressed to petitioner concerning his civic, political and religious associations on the ground that they would tend to reveal "whether in fact those organizations are racial in character" and would help verify the charges in the pamphlet, "The Shocking Truth" (R. 12, 29, 32-33).

iii. When asked to clarify his statement to petitioner at the hearing concerning the subject under inquiry by the Committee (see *supra*, n. 4, p. 11), Mr. Thomson was unable to state the subject under inquiry or the need for petitioner's testimony in any terms other than to repeat parts of the authorizing statute; he could make no understandable explanation as to which subjects of investigation under the statute were involved in petitioner's questioning nor what he had meant by his statement at the hearing that "several" of the subjects were not involved. The three subjects of investigation authorized under the statute are (1) tax exempt status, (2) threat of integration and (3) violation of the champerty, barratry and maintenance laws. When asked which of these three subjects were involved in petitioner's interrogation, Chairman Thomson variously stated (R. 29-30): that the questioning had not been related to the first, had been related to the second and *not* to the third (R. 29, l. 37-R. 30, l. 4); then he implied that it *had* been related to the third (R. 30, l. 5-6); then he stated it had *not* been related to the third (R. 30, l. 29-37); and finally he stated that it *had* been related *only* to the third (R. 30, l. 38-41).

iv. Notwithstanding these admissions by Chairman Thomson, the Circuit Court ordered petitioner to appear

before the Committee on October 23, 1957,[5] to answer the questions he had previously refused to answer (R. 57-58, 86-87). The Court overruled petitioner's reliance on *Watkins* v. *United States*, 354 U.S. 178, and *Sweezy* v. *New Hampshire*, 354 U.S. 234, and his contention that the Committee's proceedings violated his rights under the First and Fourteenth Amendments.[6]

v. Thereafter petitioner appeared before the Committee on October 23rd and again refused to answer the questions previously put to him on September 20th. On October 30th petitioner was tried for civil and criminal contempt. At his contempt trial petitioner expressly reasserted all of his earlier constitutional contentions; nevertheless he was found guilty of both civil and criminal contempt and sentenced to serve 10 days in the Arlington County jail

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[5] The Circuit Judge, in his order of Oct. 15, 1957, refused a stay pending appeal. In the week between October 15th and October 23rd petitioner unsuccessfully sought a stay of the order of October 15 from the Supreme Court of Appeals of Virginia and from the Chief Justice of this Court, fearing that his failure to employ any available means of review might result in invocation by the courts of Virginia of the doctrine of the *Mine Workers* case, 330 U.S. 258. Having exhausted the only means available for appeal of the order of October 15 prior to October 23rd, when he was required to answer, petitioner contended at his contempt trial that the *Mine Workers* doctrine was inapplicable. This contention was accepted by the Circuit Judge (R. 63, 66, 100), by counsel for the Committee in opposing petitioner's request for a writ of error, and by the Supreme Court of Appeals of Virginia which affirmed both the order to testify and the contempt conviction on the merits, making no reference to the *Mine Workers* doctrine (R. 111-112).

[6] Petitioner's constitutional contentions were succinctly stated before the Committee on September 20, 1957 (R. 74-75); in the motion to quash (R. 3-5) and the oral argument in the Arlington Circuit Court on October 15, 1957 (R. 37-48); in the Notice of Appeal and Assignments of Error from the order of October 15 (R. 87-89); in the motion to quash filed on October 29 in the Arlington Circuit Court (R. 90-91); before the Arlington Circuit Court at the trial for contempt on October 30; in the Notice of Appeal and Assignments of Error from the judgment of October 30 (R. 108-111); and before the Supreme Court of Appeals of Virginia in the Petitions for Writs of Error.

and to pay a fine of $50.00 (R. 107). The sentence was stayed pending appeal (R. 100-101).

vi. On January 20, 1958, the Supreme Court of Appeals of Virginia refused petitions for writs of error sought by petitioner from the order of October 15, 1957, compelling him to answer the Committee's questions, and from the judgment and order of October 30, 1957, convicting and sentencing petitioner for civil and criminal contempt for disobedience of the order of October 15 (R. 111-112). As concerns the order to answer, the Supreme Court of Appeals was "of opinion that the said order is plainly right"; the Court likewise found that the judgment of contempt "is plainly right" and affirmed both rulings.

On the ground that his interrogation violated constitutional liberties, petitioner seeks reversal of the judgment of the Supreme Court of Appeals affirming his conviction and sentence.

Summary of Argument

I

First Amendment limitations apply with full vigor to legislative investigation. Prior decisions of this Court foreshadowed its declaration in *United States* v. *Rumely*, 345 U.S. 41, that legislatively compelled testimonial disclosures present weighty First Amendment issues. Any lingering doubts after *Rumely* were put to rest by *Watkins* v. *United States*, 354 U.S. 178, and *Sweezy* v. *New Hampshire*, 354 U.S. 234. In *Watkins* the Court stated unequivocally that legislative investigation "is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly." And in *Sweezy* this Court held the First Amendment's guarantees equally applicable to state legislative inquiry. Finally, the unanimous ruling of this Court in *NAACP* v. *Alabama*, 357 U.S. 449, can leave

no doubt whatever that freedom and privacy of civic, political and religious association is protected from unwarranted intrusion by governmental inquiry.

II

The Committee made unprecedented massive intrusion upon petitioner's First Amendment freedoms. It demanded that petitioner reveal his relationship to local and national organizations active in the field of civil rights, and to individual members thereof, in an atmosphere of bitter local hostility and antagonism to such associations. Indeed, petitioner was ordered not only to disclose NAACP affiliation but also association with a substantial number of civic and political groups representing widely diversified interests and membership. And the Committee intruded even upon petitioner's freedom of religious association by its questions concerning the B'nai B'rith, the National Conference of Christians and Jews and the American Friends Service Committee.

It is immaterial that most of the organizations about which petitioner was questioned are held in high public esteem by responsible persons in Virginia and elsewhere. Persons may be dissuaded from joining the most laudable causes if membership may be followed by subpoena, for one compelled to appear before an apparently hostile governmental authority is subject to the idle curiosity of the general public, the suspicion of many credulous persons and the hatred and hostility of the bigoted minority.

III

The Committee's intrusion upon petitioner's cherished liberties was completely unwarranted and unjustified. The only justification the Committee could offer for its questions to petitioner was that they would enable it to determine

whether the organizations in question are "racial in character" and would help to verify the charge of petitioner's connection therewith. Certainly something more than this is required before the state may compel a citizen to reveal his civic, political and religious associations.

Indeed, petitioner's questioning was so utterly lacking in legislative need or governmental justification that the Committee could not even state the subject under inquiry to which the questioning was supposed to relate. The testimony of the Committee Chairman rules out any subject of inquiry at the time of petitioner's appearance other than "integration or threat of integration on the public school system of Virginia." If this manifestation of "massive resistance" can properly be a subject of Virginia's inquiry at all, which we doubt, nevertheless the Committee's effort to determine whether organizations such as the NAACP, the National Conference of Christians and Jews and the Washington Inter-Racial Workshop were interracial in character simply cannot be related to this supposed subject of Virginia's concern. In sum, the Committee has been unable to demonstrate a legislative justification of any kind for its intrusion upon petitioner's freedom of association.

IV

Petitioner's interrogation was not only unjustified but tainted by unlawful purpose. Since the Committee's interrogation of petitioner was but an instrumentality for the accomplishment of the unconstitutional purpose of denying free and equal access to the courts to accomplish school desegregation, petitioner's conviction contravenes the constitutional guarantee of equal protection. Moreover, petitioner's interrogation cannot, contrary to the guarantees of the First Amendment, be validated by the only announced purpose of the Committee, to achieve results "devastating

to the NAACP," which would "bust that organization wide open" by discouraging membership under pain and penalty of governmental interrogation and censure.

The legislative history of the enactment of the Thomson Committee is replete with governmental declarations of unlawful purpose, to wit, nullification of the right to desegregated public schooling in Virginia. The Committee's activities, virtually limited to investigation of the NAACP, demonstrate the perseverance of Chairman Thomson in implementing his public promise that the Committee's investigation would be used "to keep the NAACP out of litigation, which is the heart of the organization."

Unfortunately Chairman Thomson's excesses are not an isolated departure from civilized standards of legislative conduct but merely representative of the use of legislative investigation as an anti-integration device in the states which are "massively resisting" desegregation. Legislative investigations as an anti-integration device have been widely employed or threatened in Alabama, Georgia, Florida, Louisiana, Mississippi, South Carolina and Virginia. These investigations, authorized and undertaken since this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483, are sometimes thinly veiled but more often publicly acknowleged governmental efforts at harassment, intimidation and punishment of those who, by litigation, organization, or persuasion, support school integration and equality for Negroes. This Court's integration mandate cannot thus be "nullified indirectly." *Cooper* v. *Aaron*, No. 1, August Special Term, 1958.

V

The anti-integration investigating committees are rarely concerned with activity potentially the subject of legislation—their "investigations" amount to little more than

the demand for the names and associations of individuals dedicated to improved race relations and civil rights. Thus, the primary effort of the Thomson Committee was to obtain the names of NAACP members and others who support integration; none of the questions addressed to petitioner concerned his activities—the greatest number were demands for the identification of others or petitioner's association with organizations and their association with the petitioner.

Diligent speculation fails to reveal any grounds upon which states could support compulsory interrogation such as that to which petitioner was subjected; no more by investigation than by lawmaking may legislatures go beyond the permissible area of reprehensible group activity into the forbidden area of individual association itself. In any event, no justification is presented in petitioner's case for the Committee's deliberate massive intrusion upon his freedom and privacy of association with others in promoting race relations and civil rights in Virginia.

ARGUMENT

COMPELLED INTERROGATION OF PETITIONER BEFORE AN INVESTIGATING COMMITTEE OF THE VIRGINIA LEGISLATURE, CONCERNING HIS ASSOCIATION WITH THE NAACP AND OTHER CIVIC, POLITICAL AND RELIGIOUS ORGANIZATIONS, DEPRIVED PETITIONER OF CONSTITUTIONALLY-PROTECTED LIBERTIES.

I. First Amendment Limitations Apply with Full Vigor to Legislative Investigation.

Even before this Court's recent decisions explicitly affirming First Amendment limitations upon legislative inquiry, it was manifest that such inquiry is subject to the constitutional prohibition against impair-

ment of freedom of religion, speech, press and assembly. For the First Amendment does not merely preclude governmental prohibition of the exercise of freedoms of belief, expression and association; it equally precludes "indirect discouragements"[7] flowing from restrictive governmental action of various kinds, including those derived from governmentally-compelled disclosures.[8]

The decisions of this Court before *United States* v. *Rumely*, 345 U.S. 41, clearly foreshadowed the Court's declaration that compelled testimonial disclosures present weighty First Amendment issues. Any doubt as to the applicability of the First Amendment to legislative inquiry should have been resolved by this Court's declaration in *Rumely* that compelled disclosure before Congressional investigating committees of the political activities and associations of individual citizens is subject to the limitations of the First Amendment. There a Congressional committee sought to compel identification of persons who made "bulk purchases" of books from the "Committee for Constitutional Government". In deference to its "duty to avoid a constitutional issue" and since such compelled identification raised "doubts of constitutionality in view of the prohibitions of the First Amendment," this Court construed the Committee's authorization not to include power to compel such identification.

Any possible lingering doubts after *Rumely* concerning the applicability of First Amendment protections to legislative inquiry were put to rest by *Watkins* v. *United States*, 354 U.S. 178, and *Sweezy* v. *New Hampshire*, 354 U.S. 234. This Court said in *Watkins* (at p. 197):

> "Clearly, an investigation is subject to the command that the Congress shall make no law abridging freedom

[7] *Communications Assn.* v. *Douds*, 339 U.S. 382, 402.

[8] *Thomas* v. *Collins*, 323 U.S. 516, 538-41.

> of speech or press or assembly. While it is true that there is no statute to be reviewed, and that an investigation is not a law, nevertheless an investigation is part of lawmaking. It is justified solely as an adjunct to the legislative process. The First Amendment may be invoked against infringement of the protected freedoms by law or by lawmaking."

The Court emphasized in *Watkins* that "The mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of governmental interference. And when those forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous" (at p. 197).

In *Sweezy* this Court made clear that the principles announced in *Watkins* for Congressional investigations apply with equal force to compelled disclosures before state legislative investigating bodies. Four Justices held Sweezy's interrogation an infringement upon First Amendment rights and declined to consider whether this infringement could be justified by any overriding state interest in the disclosures sought, since it was not clear that the legislature had authorized the inquiry addressed to Sweezy. Two members of the Court agreed with the other four Justices that Sweezy's First Amendment rights had been infringed and based their decision squarely thereon without reference to the issue of authorization. A majority of this Court clearly held the First Amendment's guarantees applicable to compulsory state inquiry.

The proposition which commended itself to a majority in *Sweezy* became the basis of a unanimous ruling of this Court in *NAACP* v. *Alabama*, 357 U.S. 449. This Court expressly found the demand for the membership rolls of

the NAACP to constitute "substantial restraint upon the exercise by petitioner's members of their right to freedom of association" (at p. 462). The *NAACP* decision leaves no doubt that freedom and privacy of association in civic, political and religious organizations is protected from unwarranted intrusion by governmental inquiry.

Watkins, Sweezy and *NAACP*, following upon the dictum in *Rumely*, affirm that legislatively-compelled disclosure of civic, political and religious association is an unwarranted intrusion upon First Amendment rights, at least in the absence of overriding governmental need. We respectfully submit that the intrusion upon petitioner's protected freedoms is both more severe and less justified by governmental need than the constitutional infringements in *Rumely, Watkins, Sweezy* and *NAACP*.

II. The Committee's Intrusion Upon Petitioner's First Amendment Freedoms.

The briefest examination of the questions petitioner refused to answer demonstrates the direct restraint on First Amendment rights implicit in compelling answers thereto. The questions require petitioner to reveal his relationship to local and national civic, political and religious organizations active in the field of civil rights, as well as to individual members thereof, in an atmosphere of bitter local hostility and antagonism to such associations.

This Court recently considered a demand for disclosure of NAACP membership and found the demand a "substantial restraint upon the exercise by petitioner's members of their right to freedom of association." It was emphasized that "inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *NAACP* v. *Alabama*, 357 U.S. 499, 462.

The ruling in *NAACP* is necessarily applicable in the instant case wherein petitioner has been compelled to disclose not only NAACP affiliation, but also affiliation with other civic, political and religious groups. These organizations, no less than the NAACP, espouse causes and programs regarded by many Virginians as "dissident"; many of them are in the forefront of the effort to accomplish school integration and to secure equality for Negroes. We deem it unnecessary to belabor what is common knowledge—that, in the current atmosphere in Virginia, not inconsiderable hostility is brought to bear upon those who are members of these organizations.[9]

The intrusion upon cherished First Amendment freedoms is, if anything, more severe in petitioner's case than in the *NAACP* case. The Committee's sweeping demands for disclosure constitute unprecedented inquiry into association with a substantial number of civic and political groups representing wide and diversified interests and membership. Moreover, petitioner was asked to reveal associations not only with a wide range of civic and political organizations, but the Committee made gratuitous intrusion upon petitioner's freedom of religious association as well. Specifically, the Committee inquired concerning petitioner's association with the B'nai B'rith, the National Conference of Christians and Jews and the American Friends Service Committee.[10]

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[9] The pamphlet "The Shocking Truth" from the Fairfax Citizens' Council (R. 84) itself shows the unfavorable comparisons and characterizations to which members of civil rights groups are subject in Virginia. Elaborate documentation of the harrassment, intimidation, loss of employment and other manifestations of public hostility to which civil rights advocates have recently been subjected in Virginia may be found in the record in this Court in *Harrison* v. *NAACP*, No. 127, October Term, 1958, at Tr. 171, 173, 176-8, 184-7, 193-201, 205, 209-212, 218-225, 229-232.

[10] The Thomson Committee's demands for identification of religious association, not only from petitioner but other witnesses as well (see the Washington Post and Times Herald, Nov. 15, 1957, p. A-1; Nov. 17,

Nor does the fact that most of the organizations are held in high public esteem by responsible and thinking persons in Virginia and elsewhere render the demand

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1957, p. D-13), is a reminder of less subtle inquisitions into religious association to which Jews, Catholics and Protestants were historically subjected. An excellent study by Professor George H. Williams, "Reluctance To Inform", appearing in the July 1957 issue of *Theology Today*, traces the history of compelled informing in each of these religious traditions and the consequent strong religious theme of hatred and contempt for the informer. Professor Williams finds:

> "From our survey of an impulse in the three major religious traditions which have shaped American society, Jewish, Catholic, and Protestant, it is evident that the seemingly 'natural' reluctance to expose 'the names of the brethren' is grounded in the millennial experience of minority groups in safeguarding themselves in a hostile society and in the doctrine of the priesthood of all believers with its attendant scruple of confessional secrecy. The common ground of all the laws, canons, precepts and testimonies in the three traditions surveyed is that the adherents of diverse religious minorities have not regarded their own group as basically inimical to society at large and have therefore not considered it seditious to refuse, at hearings or in court, to expose members of their own group to unwarranted investigation and social molestation or reprisal by revealing their names."

We particularly commend to the Court's attention the concluding admonition of Prof. Williams' study:

> "In the light of the long history of opposition to informing, especially in the dissenting and minority traditions, it would appear that the best recourse of a state, the judicial and legislative organs of which respect the individual conscience, is to remain content to endeavor to convince the conscientiously reticent of the clear and present danger to society involved in his withholding the names of, and information concerning, *demonstrably* dangerous members of society. In restraining itself from probing too far or demanding too much in this area of the religiously sensitized conscience, the state . . . may justify its judicial patience on the ground that it is out of the stuff of intimate confidence, partial and even perverse loyalty, fraternal coherence, and charitable discretion that the larger cohesions of the commonweal are drawn . . . In a modern mobile society the consideration of kinship, which in canon law justified taciturnity about the misdeeds of a relation and which even today legally prevents spouses from testifying for or against each other, has been in part replaced in psychological importance by the intimacies of voluntarist societies to which the democratic citizen often feels much closer affinity than to blood relations privileged in canon law to the fourth degree."

for disclosure harmless. Persons may be dissuaded and discouraged from joining the most laudable causes if their membership might bring a subpoena requiring them to defend their associations in a censorious governmental inquiry. Indeed, merely being called before a body such as the Thomson Committee is a degree of stigmatization—a person compelled to appear before an apparently hostile governmental authority is subjected to the idle curiosity of the general public, the suspicion of many credulous persons and the hatred and hostility of the bigoted minority.

It will hardly be denied that most of the organizations about which petitioner was asked are pro-civil rights groups which, in Virginia today, fall within the category this Court described as "dissident" in *NAACP* v. *Alabama*, *supra*.* In any event, freedom of association is not limited to dissident groups. First Amendment freedoms do not assure liberty of association only for unpopular groups; they provide a general and unselective assurance that the right to join civic, political and religious causes will not be impaired by governmental action. Petitioner's compulsory disclosure of membership and association with the NAACP, the ACLU, the ADA, the Friends and like organizations, is a disparagement and discouragement equally restrictive of his own freedom and the freedom of others to undertake such associations. In the face of these restraints, we turn now to the question whether the disclosures sought from petitioner can possibly be justified.

III. Absence of Justification for the Committee's Intrusion on Cherished Liberties.

This Court stated in the *NAACP* case that the "interest of the State must be compelling" to justify the adverse effect which disclosure of membership may have on freedom

of association. In the instant case there is not only an absence of "compelling" governmental "interest," but an absence of any justification whatsoever for the Committee's invasion of petitioner's liberties. Even less than in *Watkins, Sweezy* or *NAACP* is the inquiry in this case justified by any governmental need for the answers sought.

The Committee's questioning of petitioner was based on no more than unverified allegations in a pamphlet by an unknown organization which linked petitioner with various civic, political and religious organizations.[11] The only justification that the Committee could offer in the courts below for addressing its questions to petitioner was that they would enable it to determine whether in fact those organizations are "inter-racial" in character and would help verify the charge of petitioner's connections therewith.[12] Nothing can illustrate more forcefully just how specious and tenuous is this attempted justification than Chairman Thomson's own testimony (R. 32-33):

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[11] While Chairman Thomson intimated in his testimony in the Circuit Court that the pamphlet "The Shocking Truth" was not the sole cause for petitioner's interrogation (R. 19), the Chairman's impression was contradicted by Committee Counsel whose statement makes clear that petitioner was called solely because of the allegations in the pamphlet (R. 18-19). At any rate, as Chairman Thomson fully conceded "I called Mr. Scull to establish whether or not what was reported in there [the pamphlet 'The Shocking Truth'] was true (R. 20, 32, 33)." Apparently the questioning of petitioner on so flimsy a basis was not unusual, for Chairman Thomson boldly volunteered his practice of proceeding on the basis of nothing more than "anonymous telephone calls" (R. 20).

[12] It should also be noted that even more than in *Watkins* and *Sweezy*, the Committee's inquiry was lacking in authorization from the parent body. The Virginia Assembly authorized the Committee to investigate the activities of organizations "which seek to influence, encourage or promote litigation relating to racial activities in this state." Chairman Thomson, however, was less interested in organizations which engage in Virginia *racial litigation*, of which there are few, than he was in organizations with *inter-racial membership;* most of the organizations concerning which petitioner was questioned are therefore inter-racial in membership, but do not engage in racial litigation. Chairman Thomson was quite candid in conceding that his questioning far exceeded his authorizing resolution:

"Q. Can you tell me exactly how the question: 'Has the National Conference of Christians and Jews used that box number?' is pertinent to the question, to the subject under inquiry?

A. In two ways:

First of all, if he were a member, assuming he answered in the affirmative, we would have asked him if it was a racial organization. I do not happen to know, myself. If it is a racial organization, it would have been a matter itself for further inquiry.

Q. You don't know whether the National Conference of Christians and Jews is a racial organization, Mr. Thomson?

A. No, sir, I know nothing about it, to be very frank with you." [13]

Certainly something more than this is required before the state may compel a citizen to reveal his civic, political and religious associations.

Indeed, petitioner's questioning was so utterly lacking in legislative need or governmental justification that Chair-

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At petitioner's hearing he had said *"by 'racial' I mean organizations whose membership is inter-racial in character . . ."* (R. 81). In the Circuit Court Chairman Thomson did not seek to hide this departure from the authorizing resolution; on the contrary, he justified it on the ground that the legislature might authorize such an inquiry in the future, stating "we were trying to determine through his testimony whether in fact those organizations are racial in character, whether *at a future time* the legislature might wish to authorize an investigation of those subjects" (R. 29) (emphasis added). Since the Committee's authorization was not to investigate "organizations whose membership is inter-racial in character" but only those which "promote litigation," the Chairman sought to justify the inquiry on the presumption that the legislature would "at a future time" authorize a broader investigation encompassing such organizations. That, of course, is what *Watkins* and *Sweezy* condemn.

[13] The patent absurdity of justifying the questioning on the ground that the Committee was trying to determine whether the organizations were "inter-racial" in character is evidenced by the Committee's questions about the obviously inter-racial NAACP and the inter-racially named "Washington Inter-Racial Workshop" (R. 80-81).

man Thomson was even unable to state the subject under inquiry to which the questioning was supposed to relate.[14] At the Committee hearing, Chairman Thomson identified the three statutory subjects of investigation concerning organizations engaged in racial litigation as (1) tax exemption, (2) the threat of integration, and (3) violation of certain champerty, barratry and maintenance laws (see *supra*, n. 4, p. 11). In the Circuit Court, he testified that petitioner's questioning was unrelated to the first but was related to the second subject (R. 29-30); as concerns the third subject, he testified successively that petitioner's questioning had not been related to it, that it had been related to it, that it had not been related to it, and finally that it had only been related to it (see *supra*, p. 13).

Chairman Thomson's equivocal testimony thus rules out either tax exemption or "champerty, barratry and maintenance" as the subject under inquiry. Nor does his testimony that the subject of the Committee's investigation in the interrogation of petitioner was "integration or threat of integration on the public school system of Virginia, or the general welfare of Virginia" (R. 29-30) provide a possible justification for petitioner's interrogation. If this manifestation of "massive resistance" can properly be a subject of inquiry at all, which we doubt (see

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[14] The Committee's inability to specify some cogent and delimited subject under inquiry is not only persuasive of the absence of justification for petitioner's interrogation but also invokes the due process prohibition recently applied in *Watkins* v. *United States*, *supra*. The confusing answer given petitioner at his hearing (see n. 4, p. 11, *supra*), was compounded by the complete inability of the Committee Chairman to produce in the Circuit Court an understandable subject of inquiry to which the questioning might conceivably be related. Since neither the authorizing statute nor the Committee's attempted illuminations provided a basis upon which petitioner could determine, before the point of jeopardy had irrevocably been reached, whether he was legally obliged to answer, he was denied the fair notice guaranteed by the due process provisions of the Constitution as applied in *Watkins*.

Section IV. below), there is still lacking any demonstrable relationship between the questions addressed to petitioner and this subject. Whatever justification Virginia could derive from its interest in "the threat of integration on the public school system," Chairman Thomson's attempt to determine whether the NAACP, the B'nai B'rith, and the National Conference of Christians and Jews were "racial" organizations, simply cannot be related to this supposed subject of Virginia's concern.

In sum, petitioner's interrogation cannot be justified by Chairman Thomson's remarkable curiosity as to whether organizations such as NAACP, the B'nai B'rith, and the Washington Inter-Racial Workshop were inter-racial in character. Moreover, the Virginia Legislature had indicated the three areas where information was sought and the questioning of petitioner cannot be related to any of them. Finally, it must be a requirement, in demonstrating legislative justification for intrusion upon First Amendment rights, that the Committee be able to explain the need for the information in simple and explicit terms; no explanation—simple, explicit or otherwise—appears anywhere in this case.

IV. Petitioner's Interrogation Not Only Unjustified but Tainted by Unlawful Purpose.

Certainly enough has already been shown to demonstrate the absence of any governmental justification for compelling petitioner to answer. We cannot refrain from pointing out, however, that the intrusion on First Amendment rights in the instant case is not only unsupported by any tangible legislative need, but is affirmatively tainted by a clearly unjustifiable and unlawful legislative effort. The only consistently asserted justification in the enactment of the Committee's authorizing statute and in its activities un-

der that statute, was the illegal and unconstitutional purpose of resisting integration.[15] The declared unlawful purpose of the Committee's interrogation repels the possibility that its inquiry was a justified intrusion upon First Amendment freedoms supported by some valid legislative "need"; and this declared unlawful purpose also brings into play the equality guarantee of the Fourteenth Amendment, which may no more be nullified indirectly than directly. *Cooper* v. *Aaron*, No. 1, August Special Term, 1958.

The legislative history of the enactment of the Thomson Committee's authorization clearly and explicitly reflects the determination of the Assembly, and the Governor who called it into special session, to nullify the right to integrated public schooling by harassment of the organization most actively seeking in the courts to vindicate the constitutional right to integrated public schooling. The Committee's questioning of approximately 100 persons connected with the NAACP, while calling but one witness connected with any other organization, is itself a demonstration of how closely Chairman Thomson was able to pursue his public promise that his investigation would be used "to

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[15] Petitioner's contention concerning the purpose of the Committee's inquiry does not contravene the statement in the *Watkins* opinion (at p. 200) that the solution to the problems there raised "is not to be found in testing the motives of committee members." What is relied on here is not covert motives but unsolicited and overt contemporaneous expressions of purpose by the Assembly, the Governor and the Committee. In any case, this Court has not hesitated to strike down state legislative and executive action whose purpose was found to be racially or otherwise discriminatory. See *Yick Wo.* v. *Hopkins*, 118 U.S. 356, 347; *Guinn* v. *United States*, 238 U.S. 347; *Grosjean* v. *American Press Company*, 297 U.S. 233; *Lane* v. *Wilson*, 307 U.S. 268; *Niemotko* v. *Maryland*, 340 U.S. 268; *Terry* v. *Adams*, 345 U.S. 461. Indeed, this Court most recently predicated its decision in the Little Rock case (*Cooper* v. *Aaron*, No. 1, August Special Term, 1958) on the fact that the conditions of which the state there complained were "directly traceable to the actions of legislators and executive officials of the state of Arkansas, taken in their official capacities, which reflect their own determination to resist this Court's decision in the *Brown* case . . ."

keep the NAACP out of litigation, which is the heart of the organization."

Unfortunately, Chairman Thomson's excesses are not an isolated departure from civilized standards of legislative conduct; on the contrary, what happened in Virginia must be viewed against the pattern of similar action throughout the states "massively resisting" desegregation. The Southern states which have so far resisted any degree of public school integration, have utilized legislative inquisition as an effective weapon against the NAACP and others who support the effort of Negroes to achieve equality. *Appendix B, infra*, pp. 41 to 75, a "*Chronology of Anti-integration Investigations in the South*" demonstrates that legislative investigation as an anti-integration device has been widely employed or threatened in Alabama, Georgia, Florida, Louisiana, Mississippi, South Carolina and Virginia:[16]

Alabama

In Alabama, anti-NAACP investigation has so far been rendered unnecessary by the issuance in June, 1956 of a state court injunction prohibiting the NAACP from conducting any business in Alabama. Nevertheless, a series of resolutions calling for legislative investigation of the NAACP and the supporters of integration have been introduced in the legislature. Representative is a statement by the legislative proponent of a resolution asking for the names of students who signed a petition urging readmission of Autherine Lucy to the University of Alabama: "Let's find out who these students are who want to go to school with

[16] The following summaries are based upon material appearing as *Appendix B* to this brief. This material, extracted without alteration from objective reports in the *Southern School News*, represents the history from May of 1954 to the time of the printing of this brief of the anti-integration and the anti-NAACP legislative investigations in the South.

Negroes, and let's let them go . . . it is time to let the people know that white supremacy is going to stand in Alabama."

Florida

In Florida, a special anti-NAACP legislative investigating committee was established in 1956. It held hearings in 1957 and 1958 wherein numerous witnesses from the NAACP, the ACLU and various inter-racial organizations were questioned. Witnesses included ministers, teachers, litigants in integration cases and individuals who support integration. The purported basis of the hearings has been, in the words of the Committee Chairman, "a link between the Communist Party and the NAACP." When in July of 1958 the Florida Supreme Court decided a test case upholding the committee's right to subpoena NAACP records, the Chairman announced that "now the committee can go ahead with its plans."

Georgia

In Georgia, the 1958 legislature approved a resolution to investigate "controversial bi-racial Koinonia Farms" and established a special "race suit" study committee. The committee, organized in June of 1958, has announced it will conduct investigations to determine whether racial discrimination suits brought in Atlanta violate state barratry laws.

Louisiana

In Louisiana, a legislative committee held hearings in 1957 on "Communist influences behind racial unrest in the South." In the summer of 1958, the legislature initiated two separate investigations of pro-integration sentiment in state universities after 66 LSU faculty members signed a petition urging defeat of pending segregation legislation.[17] A focal point of the investigations is the allegation that sub-

[17] A candid characterization of anti-integration investigating committees in the South is the statement of segregation leaders William

versive influences are behind pro-integration sentiment. In the words of Representative Garrett "integration is the southern expression of communism." Signers of the LSU petition have been sent legislative questionnaires on their racial convictions and it has been indicated that they will be subpoenaed as witnesses.

Mississippi

In Mississippi, the legislature established a State Sovereignty Commission in 1956 with full subpoena power, as a watch-dog against "racial integration" and "federal encroachment." The committee's investigation division which has hired secret investigators and informants has an assignment to check on maneuvers of those seeking to force integration in Mississippi, in the words of Governor Coleman, "so we can be ready for all counterattacks." In the spring of 1958, the legislature approved an investigation of the NAACP to determine its "means, methods, associates and ultimate objectives."

South Carolina

In South Carolina, the 1956 legislature established an investigation of NAACP activities in the Negro State College at Orangeburg. The sponsor of the resolution explained that "such an investigation would determine who are members and sympathizers of the NAACP among the faculty and student body, the extent of such member participation in such activities and whether or not its members are misleading the Negro citizens and misrepresenting the aims and objectives of the NAACP to the Negro people." The committee held hearings on the campus, at which it questioned a number of staff and faculty members and others. In the spring of 1958, the legislature established

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Rainach and John Garrett of the Louisiana State Senate and House who, in July 1958, when questioned about their investigation of the 66 LSU faculty members, insisted they were "not off on a witchhunt" but were bent on "exposing a small clique of professors . . ." (*infra*, p. 55).

a permanent committee to investigate Communist activities in the state after a message from the Governor expressed concern over reports of Communist connections within the faculties of two Negro colleges.

In Virginia, the legislature established the Thomson and Boatwright committees in 1956 with over-lapping jurisdiction to investigate the NAACP and integration suits. Both committees held extensive hearings in 1957 inquiring into NAACP membership and subpoenaing NAACP members, parents of litigants and others involved in integration suits. In 1958, the authorizations of the two committees having expired, the legislature approved the creation of a special legislative committee to continue the work of the two former committees.

Virginia

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These anti-integration "investigations," authorized and undertaken since this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483, are sometimes thinly veiled but more often publicly acknowledged governmental efforts at harassment, intimidation and punishment of those who, by litigation, organization, or persuasion, support school integration and equality for Negroes. Petitioner is one victim of a crude, albeit candid, effort in Virginia and elsewhere in the South, to deny the NAACP, its members and others, free and equal access to the courts to obtain the rights recently recognized in the *Brown* case.

The Fourteenth Amendment assures unfettered and nondiscriminatory access to the courts for the redress of grievances and the assertion of constitutional rights. *Truax* v. *Corrigan*, 257 U.S. 312, 334; *Terral* v. *Burke Construction Company*, 257 U.S. 529; *Barbier* v. *Connolly*, 113 U.S. 27,

31. Only recently this Court evidenced its concern for equality of access to appellate courts and struck down under the Fourteenth Amendment state action denying such equality. *Griffin* v. *Illinois*, 351 U.S. 12. Denial or restriction of access to the courts is no less state action because it is implemented through legislative investigation. *Cf. Watkins* v. *United States, supra*, at p. 197 and *NAACP* v. *Alabama, supra*, at p. 463. Equal protection of the laws requires equal access to the courts. "The constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown* case can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly . . ." *Cooper* v. *Aaron*, No. 1, August Special Term, 1958.

Since the Committee's interrogation of petitioner was an instrumentality for the accomplishment of the illegal and unconstitutional purpose to deny to the NAACP, its members and others, equal access to the courts, petitioner's conviction contravenes the Fourteenth Amendment's guarantee of equal protection. Moreover, legislative interrogation to achieve results "devastating to the NAACP," which would "bust that organization wide open" by discouraging membership therein under pain and penalty of governmental interrogation and censure, is plainly contrary to the guarantees of the First Amendment. Certainly petitioner's interrogation cannot be validated by this kind of "governmental need" while the First and Fourteenth Amendments retain the meaning with which they have been imbued by constitutional history.

V. Conclusion

The legislative inquisition to which petitioner and others in the South who favor civil rights and equal protection for

Negro Americans are daily being subjected, has as its major objective restraint, harassment and retribution. The anti-integration investigating committees are therefore rarely concerned with activity potentially the subject of legislation—their "investigations" amount to little more than the demand for the names and associations of individuals dedicated to improved race relations and civil rights.[18]

In Virginia, for instance, the Boatwright Committee's principal activity in 1957 was the demand for the names of Virginia NAACP members. See *NAACP* v. *Committee on Offenses, cert. pending,* No. 84, October Term, 1958. The Thomson Committee likewise sought and obtained NAACP membership lists, but, of course, the matter did not end there. When the Committee called the petitioner, it inquired concerning still other individuals: Miss Caroline H. Planck and Mrs. Barbara Marx, persons active in race relations work in Arlington, Mrs. Marx having been head of the Arlington NAACP; Dr. E. B. Henderson, leader of the Virginia NAACP; Mr. Warren D. Quenstedt, Demo-

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[18] In the area of legislative investigation illegality of purpose appears almost always to be accompanied by illegality in procedure; to "exposure" committees, whose ultimate purpose is itself illegal, the method by which that purpose is achieved is of small moment. Chairman Thomson, for instance, conceded that his Committee had no published rules whatever, and he could recall only two unpublished rules, one of which provided for a quorum, while the other provided for reporting of the Committee's hearings. Certainly the first requirement of a governmental agency which presumes to obtain evidence by compulsory process is a body of rules upon which witnesses may rely in determining their rights. And this is but one respect in which the Committee failed to observe minimal procedural rights. As conceded in the Committee's final report to the Legislature (p. 3), in Prince Edward County, "Those witnesses who were represented by Counsel had previously given statements to investigators for the Committee and these statements were tape-recorded by the Investigators without the knowledge of the witnesses." In addition, as demonstrated in petitioner's case, the Committee failed to inform witnesses of the precise subjects of its inquiry and called them discriminatorily, without reason to believe that they could provide pertinent information upon subjects authorized in its enabling statute. See *supra*, n. 12, p. 26, n. 14, p. 28.

cratic candidate for Congress; and Mr. E. A. Prichard, Fairfax attorney and Vice President of the Virginia Council of Churches. None of the thirty-one questions addressed to petitioner concerned his activities—most of them were either demands for the identification of others or of petitioner's association with civic, political and religious organizations.

Diligent speculation fails to reveal any grounds upon which Virginia or any other jurisdiction could successfully justify inquisition into civic, political and religious association such as that to which petitioner has been subjected. No more by investigation than by lawmaking may legislatures go beyond the permissible area of reprehensible group activity into the forbidden area of individual association itself.[19] In any event, Virginia had no demonstrable legislative need for the information demanded of petitioner; there is nothing presented in petitioner's case to justify the Committee's deliberate massive intrusion upon his freedom and privacy of association with others in promoting race relations and civil rights in Virginia.

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[19] A number of considerations seem to preclude individual civic, political and religious association as a permissible subject of legislative inquiry. First, since legislation relates to general rather than individual norms, the disclosure of individual association appears to serve no legitimate purpose. Nor does the fact that individual membership may throw light upon the larger subject of group association lead to a different result, for it is doubtful whether the First Amendment permits legislation, and therefore investigation, concerning that larger subject. And finally, even assuming that upon a showing of illegal or dangerous group activity, association itself may become subject to legislative restraint, this would neither necessitate nor justify demands for wholesale disclosure of individual association. In the light of these considerations, it is difficult to imagine the governmental interest sufficiently compelling to render individual civic, political and religious association subject to compulsory disclosure.

For the foregoing reasons it is submitted that petitioner was constitutionally protected against the compulsory disclosures demanded of him by a Virginia racial activities investigating committee, and that the judgment affirming his conviction and sentence must accordingly be reversed.

Respectfully submitted,

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APPENDIX A

QUESTIONS ADDRESSED TO PETITIONER BY THE THOMSON COMMITTEE WHICH HE HAS REFUSED TO ANSWER (R. 76-82)

(1) "Are you a member of The Fairfax County Council on Human Relations?"

(2) "Are you a member of the National Association for the Advancement of Colored People?"

(3) "Have you contributed to any of the suits, contributed financially to any of the suits designed to bring about racial integration in the public schools?"

(4) "Have you paid court costs in any of the suits designed to bring about racial integration in the State of Virginia?"

(5) "Have you paid attorneys' fees to any attorneys in regard to racial litigation involved in the integration of the public schools in Virginia?"

(6) "Have you attended any meetings at which the formulation of suits against the State of Virginia in racial integration suits in the public schools have been discussed?"

(7) "I notice in your statement that you say that you think you have a moral duty to counsel with a fellow citizen as to his legal rights if he is ignorant of them. Do you feel qualified to counsel with him as to his legal rights?"

(8) "Who else uses that box number [No. 218 in Annandale, Va.] besides yourself?"

(9) "Does the Fairfax County Council on Human Relations use that box?"

(10) "Has the NAACP used that number from time to time?"

(11) "Has the organization know as the Citizens Clear ing House used that box number?"

(12) "Has the Fairfax County Federation of PTA's used that number?"

(13) "Has the Fairfax County Federation of P-TA Workshops on Supreme Court Decisions on the Public Schools used that box number?"

(14) "Has Miss Caroline H. Planck or Mrs. Barbara Marx used that box number?"

(15) "Do you know Mrs. Planck or Mrs. Marx?"

(16) "Has Dr. E. B. Henderson used that box number?"

(17) "Has the National Conference of Christians and Jews used that box number?"

(18) "Has the Save Our Schools Committee of Fairfax County used that box number?"

(19) "Has Mr. Warren D. Quenstedt used that box?"

(20) "Has Mr. E. T. Prichard used that number?"

(21) "Has the American Civil Liberties Union used that same box number?"

(22) "Has the Americans For Democratic Action, known as ADA, used that box number?"

(23) "Has the Japanese-American Citizens League used that box number?"

(24) "Has the Washington Inter-Racial Workshop used that same number?"

(25) "Has the American Friends Service Committee used that box number?"

(26) "Does the Community Council for Social Progress use the same box number?"

(27) "Does B'nai B'rith use that same box number?"

(28) "Does the Communist Party use that box number?"

(29) "Do you belong to any racial organization, and by 'racial' I mean organizations whose membership is inter-racial in character or organizations that are instituting or fostering racial litigation?"

(30) "Have you ever been called as a witness before any Congressional Committee?"

(31) "Has your name ever been cited by any Congressional Committee as being on any list of members of any organizations that are cited as subversive?"

APPENDIX B

Chronology of Anti-Integration Investigations In The South—Excerpts from The Southern School News

Alabama

March 1956

"State Rep. W. L. (Doc) Martin of Greene County warned that if Alabama whites continue to give and be compromised on the race issue, 'we will have but three choices to make—sell our homes and get out of Alabama, be humiliated or take up our shotguns.'

Martin made the statement in support of a resolution he had introduced to the legislative interim committee on education, requesting Dr. Carmichael to furnish the committee the names and addresses of all students who signed a petition urging the readmission of Miss Lucy.

'Let's find out who these students are who want to go to school with Negroes, and let's let them go . . . it is time to let the people know that white supremacy is going to stand in Alabama.'"

April 1956

"'. . . on the opening day of the special session, March 1, the House approved (75-0) a resolution calling for an investigation to determine if the Alabama chapter of the National Association for the Advancement of Colored People had been infiltrated by Communists. The resolution, sponsored by Rep. T. K. Selman of Walker County, would have made Miss Lucy the first witness to be subpoenaed. The proposal was buried in a Senate committee.

Rep. Charles Ramey of Hale County introduced a resolution requesting that University of Alabama President O. C. Carmichael forward to the legislature the names of all those who signed a petition in February urging the readmission of Miss Lucy after she had been suspended from classes following the campus demonstrations. Like the other proposals above, this too was still in committee."

Alabama (Cont'd.)

May 1957

"State Sen. Sam Engelhardt of Macon County, head of the Alabama Association of Citizens Councils, announced in mid-April he will introduce a bill which would create a 'State Sovereignty Commission' with virtually unlimited powers to direct Alabama's fight to preserve segregation.

Patterned after similar groups in other southern states, the nine-member commission would include the lieutenant-governor, two members of the Senate, three members of the House and three laymen. Englehardt said he would seek $50,000 to meet expenses of the commission during its first year of operation.

The Englehardt bill does not mention race, but the senator admits that the purpose of the proposal is to strengthen the state's stand on segregation.

The commission would have vast powers—the right to subpoena and examine witnesses, to require the appearance of any persons and the production of any books, records, papers or documents as evidence. Obedience would be enforced by orders of attachment. Refusal to comply would be punishable by 'fine or imprisonment in the discretion of the commission.'

The commission would be authorized to 'employ such legal, professional, expert, secretarial, clerical and other help deemed necessary to carry out its business.' This would permit the employment of private detectives or other investigators.

In a TV interview April 14, Gov. James E. Folsom called the proposed commission an 'inquisition.'"

June 1957

"On May 25, State Sen. Vaughan Hill Robison of Montgomery introduced a resolution calling for a broad legislative investigation of organizations 'responsible . . . for attacks' on segregation in Alabama. The measure is aimed not only at the NAACP, which is still under a court order restraining it from operating in Alabama, but other organi-

zations formed since the NAACP injunction. The investigating group would have power to subpoena witnesses and records, administer oaths and take testimony. The resolution stipulates that the report should be made to the legislature within 40 days after the resolution is passed.

The resolution notes a 'planned attempt on the part of a certain undesirable, irresponsible element of our society to subvert and destroy the established social order of this state.'"

Florida

August 1956

"A resolution setting up a powerful seven-man committee to investigate the activities of the NAACP was pushed through the Senate and sent to the House. It was not a part of the governor's program.

The committee would have subpoena powers and a $50,000 fund to employ legal and administrative aides. It would also develop restrictive legislation to be proposed to the next regular session in 1957."

September 1956

"This was what the special session enacted:

A law setting up an interim committee of three senators and four representatives to investigate the National Association for the Advancement of Colgred People.

The NAACP resolution was one of the most discussed outcomes of the special session. It was not part of the Collins program and there were substantial grounds for belief the governor would veto the measure. He allowed it to become law without his signature.

The committee has $50,000 to employ counsel and investigative aides. It has broad subpoena powers. Organization and preliminary sessions are expected to begin in September."

November 1956

"The joint legislative committee created to investigate the National Association for the Advancement of Colored

Florida (Cont'd.)

People—part of the state's program to preserve segregation—set up formal organization.

The first assignment handed Hawes and Cheasty by the investigative group was to determine if 'outside elements' were responsible for the Tallahassee bus boycott."

December, 1956

"The interim legislative committee investigating activities of the National Association for the Advancement of Colored People said its month-old study has developed evidence of a 'pattern' in the affairs of the organization.

John Cheasty of New York, special investigator for the committee, said the findings could not be released at this time. He promised a progress report at the next meeting set for Dec. 11.

Members of the committee said the investigation is 'really rolling.' A 96-page report has been compiled 'based on specific instances of what this committee is interested in.' However there was little hint of what the committee is doing. 'We have gathered information on the NAACP and one or two other organizations,' said Mark Hawes, of Tampa, chief counsel. 'I don't think it would serve the committee's endeavor to be more specific than that.'

Committee staff has conferred with officials in Texas, where an investigation of NAACP is under way. Cheasty went to Washington for a conference with Robert Morris, chief counsel for the Senate Internal Security Committee.

The committee has been holding secret sessions. Rep. Henry Land, Orlando, chairman, said this procedure was followed to prevent 'witch hunts.'

State financial records indicate the committee is paying for information. They list payments of $50 to 'Informant A' and 'Informant B.'

C. Farris Bryant, former speaker of the Florida House of Representatives and candidate for governor in the primary last spring, said the work of the special committee is expected to result in anti-NAACP laws when the legislature meets in May."

Florida (Cont'd.)

March 1957

"The Florida legislature begins its biennial session in April and the segregation issue suddenly looms large.

The legislative committee investigating the NAACP said it will introduce bills that will 'almost entirely suppress race agitation.'

The NAACP investigating committee has been rushing to complete its work before the legislature meets. Emphasis in the public meetings has been on linking NAACP to the various suits against segregated schools, bus seating, and public recreational facilities.

Edward D. Davis, Ocala, a former state NAACP president, was questioned about the origins of the *Virgil Hawkins* case. Hawkins, a Daytona Beach Negro publicist, has been trying for five years to enroll as a graduate law student in the University of Florida.

At the conclusion of the Tallahassee phase of the hearings, Sen. Dewey Johnson, Quincy, a committee member, said that new state laws will be offered that 'will almost entirely suppress professional race agitators.' "

May 1957

"The debate over interposition dramatized the race issue, but there were other facets. One was the report of the special interim committee which has been investigating 'racial agitators.'

The committee said its studies indicated Communists were trying to stir up racial bitterness in the state. It introduced six bills which the chairman, Rep. Henry Land of Orlando, said would keep down agitation in the field of racial relations. These measures included a bill defining barratry, one providing fines for persons soliciting funds to finance litigation, and a registration measure.

Debate on the bills before the Senate Judiciary Committee, wire services reported, made it plain they were 'designed to curb the unbridled power of the NAACP to foster law suits striking down Florida's racial segregation laws.'

Florida (Cont'd.)

Sen. Dewey Johnson, member of the interim committee, said: 'Our committee found that the NAACP employs an attorney who goes out and gets names on a petition and represents them in law suits without ever seeing the litigants. It is purely agitating by the NAACP.' "

July 1957

"The joint legislative committee that has been investigating 'racial agitators' filed a report.

Evidence was clear, the report said, that attorneys for the National Association for the Advancement of Colored People have solicited signatures to petitions seeking admission of Negro children to white schools. In some instances the report said, signers did not know the purpose of the petitions. A case was cited in which a signer testified he thought he was petitioning for a new school building.

The report asked the Florida bar to look into the ethics of such conduct by NAACP attorneys.

The committee offered a group of bills, admittedly aimed at the NAACP. The only one enacted into law continued the life of the investigating committee for another two years."

August 1957

"The legislative committee investigating the National Association for the Advancement of Colored People has reorganized for two more years of activity.

Its new chairman is Sen. Charley E. Johns of Starke, former acting governor of Florida and an outspoken leader of segregation forces. Mark Hawes of Tampa was reappointed as chief counsel. The committee said it will enlarge its activities to consider the role of Communist influence in racial agitation in the state."

January 1958

"Newspapers speculated that the joint legislative committee investigating racial agitation is preparing to study

the Tallahassee Council on Human Relations, which seeks a peaceful solution of racial problems.

While a meeting of this organization was in session, an unidentified photographer entered, took a flash picture of the biracial group and fled. A check disclosed that an investigator for the legislative committee was in the hall outside the room where the public meeting was being held.

Though the investigator denied a hand in the picture-taking incident, the *Tampa Tribune* predicted that photograph 'is sure to pop up again,' when the legislative committee meets soon.

'The committee is almost certain to regard the council as a ready-made group to investigate,' the *Tribune* commented."

February 1958

"The conduct of attorneys in the *Hawkins* case is under study by the Florida Legislative Investigation Committee, set up primarily to look into affairs of the NAACP and organizations which 'agitate' litigation.

The committee reported, after hearings last summer, that the NAACP attorneys had 'stirred up' court action in the *Hawkins* case and school segregation cases pending in Dade and Palm Beach counties.

Hawkins himself was called as a witness and asked about the role the NAACP played in his long legal battle. The committee reported Hawkins' responses were 'evasive.' However, Hawkins denied that he had received assistance from the NAACP or that his attorneys were paid by that organization.

The legislative committee which has been involved in a controversy with the NAACP came under fire from one of its members. Sen. Marion B. Knight of Blountstown announced he would resign 'unless the committee starts functioning.'

Knight in a press conference charged that three faculty members of the all-white Florida State University were sent into the state to work in behalf of the NAACP.

Florida (Cont'd.)

Knight declined to name the professors because he said the charges 'have not been proven.' But he suggested the investigative committee call them as witnesses.

After his charges appeared in print, Knight said his information about the FSU faculty members came from informants that he hoped would be called as witnesses later.

Investigators for the committee said several white professors in the University system who are members of the NAACP may be called at future committee sessions."

March 1958

"The joint legislative committee investigating racial agitation in Florida turned its attention to communism as it resumed activity after almost a year.

Principal witness at the Tallahassee hearing was Joseph Brown Matthews, one-time investigator for the U.S. Senate committee headed by the late Sen. Joseph McCarthy.

'It is basic in Communist strategy to accentuate and exploit every situation of social tension and turbulence,' said Matthews. 'The Communists exert every possible effort toward manufacturing them.'

Matthews testified that 'Communists or Communist influence were directly involved in every major race incident of the past four years since the Supreme Court "legislated" on the subject of integration.'

The witness repeated charges that 145 national officers or board members of the NAACP 'have records of affiliation with Communist organizations.'

The testimony followed a statement by Sen. Charley E. Johns, committee chairman, that it was 'the plain duty and firm intent of this committee to develop facts within its possession concerning subversion in this state.'

Johns, former acting governor and sponsor of segregation bills at the past two legislative sessions, denied that the committee is 'engaged in a witch hunt.'

'One of the aims of the Communist Party in Florida and elsewhere in the South is to agitate racial conflict and

unrest,' he said. 'This phase of the Communist Party activity in Florida will be thoroughly developed.'

A highlight of the Tallahassee hearing was the denunciation of the committee by James S. Shaw, Tallahassee merchant and treasurer of that community's Council on Human Relations. Shaw was called as a witness but was not allowed to complete his statement.

'It seems to me there is something wrong in this situation,' said Shaw after the committee ordered him from the stand. 'When the committee called me it cast aspersions on me and the organization I repesent.'

After lengthy discussion, during which Rep. W. C. Herrell of Miami threatened to resign if the witness were gagged, Shaw was allowed to continue.

He explained that the Tallahassee Council on Human Relations was not a secret organization but held public meetings, usually at the Leon County courthouse.

It was set up, he said, as a 'line of communications between Negroes and whites. One of our hopes was to relieve tensions between races caused by statewide political campaigns,' Shaw said.

At this point Shaw again was halted by a committee vote. 'We're wasting a lot of time listening to the background of this organization,' said Rep. W. G. O'Neill of Marion County.

Next session of the Johns committee is set for Miami where about 35 witnesses await questioning. These include local officials of the NAACP, Dade County Council on Community Relations and the American Civil Liberties Union.

Witnesses, including the Rev. Edward T. Graham, a Negro minister, challenged the committee's authority in court. They asked for an injunction which would quash the subpoenas. The petition said the real purpose of the committee is 'harassing, annoying and intimidating the petitioners because of the political views of the petitioners and others associated with the NAACP.' A decision is expected before the committee meets."

Florida (Cont'd.)

April 1958

"When the Florida legislative committee investigating groups which 'agitate' in racial affairs scheduled a Miami hearing, newspapers reported that 'fireworks are expected.'

Under subpoena were more than 30 witnesses. They included board members of the Dade County Council on Community Relations, the American Civil Liberties Union, the NAACP and some persons who had been accused previously of Communist ties.

A woman witness declined to answer questions about possible Red affiliations. Rep. W. C. Herrell of Dade County, a committee member, told her that any person refusing to cooperate with the committee and answer all questions 'was not fit to be a citizen of this state.'

The Rev. Theodore Gibson, NAACP leader and plaintiff in the long-standing suit attacking school segregation and the pupil assignment law was standing by to testify. Upon hearing Herrell's statement, Gibson told the committee that he would not submit to questioning.

Gibson said he felt Herrell's speech had disqualified the committee as an impartial investigative group. 'I am not a Communist, a Communist sympathizer or otherwise,' the Negro minister said as he left the hearing room.

Gibson and 14 others, who similarly refused to testify on constitutional grounds, were cited by the committee for contempt. The tactics of the witnesses, however, resulted in indefinite postponement of the committee's sessions.

Mark Hawes, committee counsel, said these witnesses had 'taken a determined and deliberate course of conduct that made it obviously of no use' for the committee to continue further along the same lines. The committee recessed, pending the outcome of the contempt citations.

Sen. Charley E. Johns, who heads the committee, said the hearing 'definitely showed a link between the Communist Party and the NAACP. We couldn't bring too much of it out because of the refusal of the witnesses to answer questions. But we had the evidence and in our minds we know there is a link.'

Florida (Cont'd.)

Committee counsel filed 'show cause' contempt proceedings in the courts and these promptly were countered by defense motions to quash. It seemed likely, attorneys for both sides said, that the constitutionality of the proceedings would be decided by the Supreme Court before any final decision on the contempt question."

July 1958

"The Florida Legislative Investigative Committee looking into alleged Communist pressure for integrated schools was given a green light by the Florida Supreme Court.

The court upheld the committee's right to subpoena records of the NAACP. In a unanimous decision the court said the committee has authority to 'investigate activities of any organization if it believes the welfare of the state is affected.'

Sen. Charley E. Johns, chairman, said he will call an early hearing in Miami where 15 witnesses who refused to testify at an earlier session have been cited for contempt. The citations have not been pushed pending a decision by the court.

'This is what we have been waiting for,' said Johns. 'Now the committee can go ahead with its plans.'

In the meantime, the committee set a meeting in Tallahassee and announced that top officials of the Ku Klux Klan in Florida have been subpoenaed as witnesses. About a dozen witnesses have been called and one committee source said an effort will be made to link one of Florida's 67 sheriffs with the KKK."

September 1958

"A full scale hearing in Miami by the interim legislative committee investigating groups involved in racial activity was called off after the Florida Supreme Court decided to look into a legal attack by four NAACP witnesses on the committee's powers.

The court hears arguments early in September.

Mark Hawes, committee general counsel, said NAACP legal maneuvers had 'hamstrung' the committee."

Georgia

February 1957

"Atty. Gen. Eugene Cook said he had drafted legislation for submission to the General Assembly which would:

(1) Have the legislature designate the NAACP as 'an organization subversive to the constitution and laws of the state of Georgia.'

(2) Create a legislative committee with authority to investigate the internal affairs of such organizations as the NAACP."

March 1958

"In addition to approving stiffer registration requirements for new voters, the legislature also: . . .

(7) Adopted a resolution to investigate controversial, bi-racial Koinonia Farms, near Americus."

April 1958

"Gov. Marvin Griffin signed into law several measures dealing with racial matters. He also authorized a legislative investigation of controversial bi-racial Koinonia Farms and approved a resolution aimed at the NAACP through a study of laws against barratry."

June 1958

"Three state senators were named by Lt. Gov. Ernest Vandiver to a special race suit study committee. Three House members had already been named.

The committee will seek to decide whether suits attacking segregation in Atlanta's public schools and in Georgia State College violate state barratry laws. It has subpoena powers and is expected to study circumstances under which the desegregation suits arose.

The House set up the committee to study statutory restrictions against barratry and rule on their adequacy."

Louisiana

April 1957

"The legislature's segregation committee held three-day hearings in Baton Rouge to find 'the causes of racial unrest in the South' and to 'paint the other half of the picture being given by the civil rights hearings in Washington.'

Communist agitation is behind race troubles, State Sen. William Rainach, committee chairman, said after the hearings. The six witnesses, all 'cooperative,' described what they called Communist infiltration into the NAACP, the Southern Regional Council, and church-centered groups seeking racial integration.

Rainach also urges Negroes to 'form their own organization with their own leadership' to represent them in working out their problems.

Spokesmen for groups criticized at the hearings later called the charges 'fantastic' and 'unjust.'

Dr. Rufus E. Clement, president of Atlanta University, who said he was one of the original incorporators of the Southern Regional Council, said, 'no thoughtful person will credit the word of a pair of ex-Communists against such decent, upstanding leaders as the Rev. Martin Luther King, Dr. Ralph Bunche, and Dr. Mordecai Johnson.'

Manning Johnson of Washington, D. C., and Leonard Patterson of Jamaica, L. I., N. Y., Negroes who said they were ex-Communists, were the 'star' witnesses of the hearings. The segregation committee, meeting in the appeals courtroom of the state capitol, also heard Joseph Z. Kornfedder of Detroit, identified as a former Communist leader, Mrs. Martha Edmiston of Middletown, O., who said she did undercover work in the Communist party for the FBI, and two New Orleans policemen: Asst. Supt. Guy Banister, former FBI agent, and Sgt. Hubert Badeaux, head of the intelligence division.

Johnson said King, Leader in the Montgomery, Ala. bus boycott, gives explanations for his actions 'which are the same as those of the Communist party . . . I think King should stand thorough investigation.' Johnson, who spent

nearly six hours on the witness stand, said King 'is leading the Negroes in the South down the road to bloodshed, violence and revolution.'

Other salient points in Johnson's testimony: The NAACP, well-infiltrated by Communists, is ripe for complete Red control; W. E. Dubois, first Negro member of the NAACP, was recently elected to the Communist party's national committee; the Southern Regional Council was formed by a Communist named James E. Jackson, later convicted under the Smith Act; Howard University in Washington is a hotbed of communism, and its president Mordecai Johnson, is an expounder of Communist doctrine; not all NAACP members are Communists—some are eggheads, liberals and socialists—but they all preach Marxism.

Patterson said the Communists came south to create race trouble as early as 1929. They concentrated on infiltrating churches and labor unions, he said, but they failed in getting Negroes, as a body, to accept communism.

Kornfedder said the NAACP is Communist-infiltrated but not yet Red-dominated. 'To have control,' he said, 'you must have enough penetration for a deciding voice in the upper councils. That isn't the case yet with the NAACP but it could be if the leadership doesn't become more alert and take more than an occasional potshot at communism.'

Sgt. Badeaux told how a police raid he led on a Communist's home in New Orleans turned up a booklet which described the NAACP as 'the most influential organization in the Negro national liberation movement' which was 'controlled by bourgeois reformists.' He said the Red plan was to seize control from the 'reformists.' Asst. Supt. Banister and Mrs. Edmiston said they were familiar with Communist plans to foment race trouble in the South."

July 1957

"Rainach's joint legislative segregation committee has received its operating funds for next fiscal year, but not from the legislature which met in May in a fiscal-matters-only session. The Board of Liquidation of the State Debt

approved $5,000 for segregation committee use for the rest of this fiscal year and $15,000 for fiscal 1958. The first $5,000 will be used to print and distribute copies of the proceedings of the committee's recent public hearings on 'Communist' influences behind racial unrest in the South.' The NAACP was principal target of the hearings.''

July 1958

''Louisiana's legislature ordered investigations of pro-integration sentiment in nine state colleges after disclosure that 66 LSU faculty members signed a petition urging defeat of new segregation proposals.

Two separate legislative investigations of state-operated colleges grew out of information that certain faculty members opposed the new school segregation bills.

One was aimed solely at Louisiana State University. A 10-man legislative committee was to report before the end of the current session in mid-July on 'subversive activities' among the faculty on the Baton Rouge campus. At committee hearings on the anti-mixing bills, it was brought out that 66 LSU faculty members signed a Louisiana Civil Liberties Union petition urging defeat of the bills.

Later, a seven-man subcommittee was established to conduct a similar investigation at all nine tax-supported colleges and to make a report at the next regular session of the legislature, in 1960.

At the end of June, matters stood this way:

(1) LSU President Troy Middleton was firm in his stand for 'academic freedom.' But he told the legislature no faculty member would be permitted to 'teach integration' because 'it is not a course at the university.'

The tall, Mississippi-born Middleton, a World War II combat general, told legislators he, personally, favored racial separation in public schools.

(2) Segregation leaders William Rainach in the Senate and John Garrett in the House insisted they were not 'off on a witch hunt,' but were bent on 'exposing a small clique

of professors who have been giving the state so much trouble for so long.'

(3) About 50 LSU faculty members had replied to a legislative questionnaire on their racial convictions. The rest who signed the LCLU petition had not been heard from, and Rainach had not disclosed which turn the LSU probe would take next.

The Tulane University Senate took a stand that the legislature's actions regarding LSU were 'implied denial of the right to free speech and petition.'

The Tulane Senate, made up of the university president, deans and directors, opposed 'legislative investigations when employed to intimidate petitioners.' The Tulane chapter of the American Association of University Professors took a similar stand. Garrett later told a Citizens Council rally in New Orleans 'more Tulane faculty members than LSU professors signed that integration petition.'

LSU's alumni council passed a resolution defending 'the good name of LSU and its reputation for independent expression of its faculty members.'

The key to understanding the college-probe situation was said to be contained in various statements by Garrett during the month. Speaking for the powerful legislative segregation committee, he emphasized that the 'subversive influences' in the colleges were pro-integration sentiments. At one point during the month's happenings he said, 'Communism and racism are inseparable . . . integration is the southern expression of communism.'

The whole affair started June 2 when New Orleans attorney George A. Dreyfous, president of the Louisiana Civil Liberties Union, gave the Rainach segregation committee copies of a petition calling the new segregation plan 'disastrous.' About 600 signatures were affixed to the petition.

August 1958

"The rush of the legislature to adjourn at mid-month obscured the three investigations of state colleges ordered

Louisiana (Cont'd.)

during the session. But the chairmen of these probes said they would push for action during the fall . . .

The three investigations, and results so far:

(1) A 10-man committee under Sen. Rainach probed for pro-integration sentiments at LSU, where 66 faculty members had signed a petition urging defeat of the Rainach committee's school segregation proposals. This investigation was begun June 10. On July 3, Rainach announced his investigators found no LSU teachers expounding desegregation in classrooms. But he said he found five who openly advocated integration outside the classrooms and 10 more who believe in race-mixing.

Rainach said the committee will make a full report before the LSU fall term begins.

(2) A seven-man committee was formed under Rep. Lester Vetter of Red River Parish to make an investigation of desegregation sentiments at all other state universities. This committee apparently has been inactive.

(3) Sen. F. E. Cole set out, with a seven-man committee, to look for un-American activities at all state colleges, including LSU. He scheduled a public hearing Aug. 29 in Baton Rouge.

Cole said he had 'no specific knowledge' of subversive influence at the colleges and didn't expect to find much, if any. He added his committee's purpose is to show parents disturbed by developments at LSU that 'our campuses are clean, and they can stop worrying.'

'If there are isolated instances [of Communist influence],' he said, 'then they can be brought to the attention of the proper college officials.' "

Mississippi

April 1956

"A 12-member commission, headed by Gov. J. P. Coleman, has been set up by the legislature as Mississippi's official 'watch-dog' against racial integration and federal encroachment on its sovereignty. . .

Mississippi (Cont'd.)

Mississippi's new State Sovereignty Commission, created at the current biennial legislative session, is authorized 'to do and perform any and all acts and things deemed necessary and proper to protect the sovereignty of the state of Mississippi and her sister states from encroachment thereon by the federal government or any branch, department or agency thereof; and to resist the usurpation of the rights and powers reserved to this state and our sister states by the federal government or any branch, department or agency thereof.'

It will also see that the directive giving effect to the Resolution of Interposition and addressed to public officials at all levels and contained in a separate legislative act is carried out. . . .

In addition to Gov. Coleman, other members of the 'watch-dog' sovereignty commission include Atty. Gen. Joe T. Patterson, Lt. Gov. Carroll Gartin and House Speaker Walter Sillers, as ex-officio members, and three citizens to be appointed by the governor, two senators named by the lieutenant governor, and three House members designated by the speaker.

The commission is empowered to subpoena witnesses, books, records, papers or documents as evidence and to use the courts to enforce obedience to any process. Failure to comply carries a fine of $100 to $1,000 and/or six months imprisonment in the county jail.

The commission is authorized to employ such legal, professional, expert and clerical help deemed necessary, and to receive contributions, donations and gifts of money and/or property from any state, department, agency, commission or subdivision thereof, and from any person, corporation or organization to be expended by it in carrying out its objectives and purposes.''

June 1956

''Mississippi's all-powerful, legislative-created State Sovereignty Commission, 'for the maintenance of segregation,' will employ secret investigators and informants in its

all-out legal effort to block enforcement of the anti-segregation rulings of the U. S. Supreme Court.

The investigation division, recommended by Gov. Coleman as the 'eyes and ears' of the commission, will be under Leonard Hicks, who resigned as chief of the State Highway Patrol to accept the assignment. Hicks is a former sheriff of Sharkey County (Rolling Ford), and a brother-in-law of former Gov. Fielding L. Wright, outspoken pro-segregation leader who died May 4 of a heart attack.

None of the secret investigators to work under Chief Hicks has been named.

In recommending the investigation division, Gov. Coleman said its assignment will be to check on maneuvers of those seeking to force integration in Mississippi 'so we can be ready for all counterattacks.' "

March 1958

"Sen. Yarbrough also offered a resolution calling on the State Sovereignty Commission, the state's segregation 'watch-dog' agency, to determine the 'ultimate objective' of the NAACP in Mississippi. It was recommended by the state department of the American Legion.

The membership-filing bill applies to 'all fraternal, patriotic, charitable, benevolent, literary, scientific, athletic, military or social organizations' in Mississippi.

Sen. Yarbrough admitted that the proposal is aimed at the NAACP. It is *Senate Bill 1829.*"

April 1958

"Both branches of the Mississippi legislature have approved an investigation of the NAACP. It is designed to ascertain the organization's 'ultimate purpose in Mississippi.'

The inquiry was based on a recommendation for it by the state department of the American Legion which charges that some of the national officers have been accused of as-

Mississippi (Cont'd.)

sociating with un-American groups. However, no charges as such have been made against the organization by federal agencies.

Another legislative approach to the activities of the NAACP is in a bill seeking to force it to file a list of its members with the secretary of state."

August 1958

"In opening an investigation of the NAACP, Sen. Stanton Hall of Hattiesburg, chairman of the General Legislative Investigating Committee, said the action is 'merely watchdog action.'

'This investigation is just to watch the NAACP,' Chairman Hall said. 'We are going to keep an eye on them as the legislature said.'

The 1958 legislative resolution authorizing the probe charged that the NAACP 'has a tendency to support various causes and legislation that have had a tendency to disrupt and in many cases threaten our American way of life.'"

South Carolina

October 1955

"A state representative from Orangeburg County (where numerous Citizens' Councils have been formed in the wake of the filing of several integration petitions) says he will seek a legislative investigation of NAACP activities at South Carolina's State College (for Negroes) at Orangeburg.

Rep. Jerry M. Hughes said:

'Such an investigation would determine who are members and sympathizers of the NAACP among the faculty and student body, the extent of such member participation in such activities and whether or not its members are misleading the Negro Citizens and misrepresenting the aims and objectives of the NAACP to the Negro people.'"

South Carolina (Cont'd.)

April 1956

"Following is an itemization of legislation enacted by the General Assembly during the current session which is directly related to segregation . . .

H-1900, a joint resolution authorizing the establishment of a nine-member committee to investigate NAACP activities 'among the faculty and students of the South Carolina State College (for Negroes).'

The president of the Negro College, Dr. B. C. Turner, acknowledged to the press that he had received an anonymous petition protesting the legislative investigation of NAACP activities at the school, but said so far as he knew the petition was not presented to, discussed by, or passed upon by the college faculty."

July 1956

"Meanwhile, six members of a legislature authorized committee to investigate certain activities of the National Association for the Advancement of Colored People were named. The committee was created by the 1956 General Assembly during its regular session. The group is charged with inquiring into the activities of the NAACP at State College (for Negroes) at Orangeburg. Specifically, it is to determine the extent to which faculty and student body at the college have participated in NAACP activities, and whether the net results have been detrimental to the school and the state."

August 1956

"The membership of a nine-man committee charged with investigating NAACP activities at State College (for Negroes) at Orangeburg was completed during July.

The committee has the responsibility of making an investigation of NAACP activities 'among the faculty and students of the South Carolina State College, and shall determine what individuals at the college are members of and sympathizers with the NAACP. The committee shall fur-

ther determine the extent of participation of the faculty and students in the activities of the NAACP, and whether or not the faculty and students are serving to mislead the Negro citizens and foment and nurture ill feeling and misunderstanding between the white and Negro races; and whether or not the activities of the faculty and students are detrimental to the welfare of the college, its students and the state of South Carolina as a whole'.

The investigating committee began its study on July 17 with meetings at the Orangeburg college. Sen. McFadden was named chairman; Rep. Hughes, vice chairman.

The day-long meeting was closed to the press in order to permit witnesses to speak with 'more freedom,' according to Hughes. The only statement issued by the committee said that Dr. Benner C. Turner, Negro president of the college, and Wallace C. Bethea, secretary of the all-white board of trustees, had been 'questioned at length'."

September 1956

"A special committee charged by the 1956 General Assembly with investigating NAACP activities at South Carolina State College (for Negroes) completed its hearing in late August but did not make public its findings. The nine-member group of legislators and laymen held hearings at the state college campus at Orangeburg and queried a number of staff and faculty members, among others. State Sen. James Hugh McFadden of Clarendon reported as committee chairman that the group had concluded its hearings and would draft a report for submission to the legislature when it convenes for the 1957 session in January."

February 1958

"On Jan. 29, Gov. Timmerman addressed a special message to the General Assembly and in it reported that Communists were thought to be active at Benedict College. The governor urged early action toward the establishment of a permanent committee to investigate communism in the

state, and said this with respect to the second Negro institution:

'It is believed that the presence of Communists at these two Negro institutions is in furtherance of a long-range program to promote racial hatred among young and impressionable Negro students, looking toward an ultimate Communist goal of creating civil and racial disorder.'"

March 1958

"'Charges made by Gov. George Bell Timmerman Jr. during January that two Negro college faculties at Columbia had been infiltrated by persons suspected of Communist leanings brought these February consequences:

(1) Legislation was introduced in both houses of the General Assembly aimed at creating a joint continuing committee to investigate communism in South Carolina . . .

(4) William C. Plowden Jr., a lieutenant in the Army Reserve and department commander of the American Legion in South Carolina, endorsed Gov. Timmerman's stand. He said: 'The governor's proposal (for an investigating committee) is excellent. I think we should expose any Communist or former Red party member in our state. It appears that at least two of the colleges have a faculty tainted with members who are listed in House un-American Activities Committee files.'

(5) The Negro Inter-Denominational Ministerial Alliance of Columbia issued a lengthy statement opposing the probe suggested by Gov. Timmerman. The Negro ministers doubted that the probe would be fairly conducted, feared that 'a fascist gestapo' would result, and termed the investigation 'a threat to Negro academic freedom.' They added that it was not necessary and said the Federal Bureau of Investigation is available to ferret out Communist threats. The Ministerial Alliance also served notice that 'if such a law is passed . . . the legality of the law will be tested in the higher courts of the federal government.'"

South Carolina (Cont'd.)

May 1958

"The race issue was indirectly caught up in legislation approved by the General Assembly authorizing the establishment of a permanent committee to investigate Communist activities in the state. Creation of such a committee was recommended strongly by Gov. George Bell Timmerman Jr. in messages expressing his concern over reports that Communist connections extended to certain members of the faculties of two Negro colleges in Columbia: Allen University and Benedict College. The measure had become law before the legislative adjournment, but committee members had not yet been named."

Virginia

February 1957

"A General Assembly committee of eight lawyers and two laymen has been appointed to investigate organizations which try to influence or promote racial litigation in Virginia.

Appointed by the heads of the two branches of the legislature were State Sens. Earl A. Fitzpatrick of Roanoke, Landon R. Wyatt of Danville, Mills E. Goodwin Jr. of Suffolk, and George S. Aldhizer II, of Rockingham County, and Delegates James M. Thomson of Alexandria, Frank P. Moncure of Stafford, Harold H. Purcell of Louisa, George E. Allen Jr. of Richmond, R. Maclin Smith of Kenbridge and Charles B. Cross Jr. of Norfolk County.

Smith is a druggist and Wyatt an automobile dealer. All the others are lawyers.

The group decided to call itself the Committee on Law Reform and Racial Activities. Thomson, chief patron of the bill setting up the committee, was elected chairman.

Leslie Hall of Alexandria has been employed as chief counsel. Hall, a 44-year-old native of Alabama, will be on leave from his position as assistant commonwealth's attorney of Alexandria while handling the committee assignment. The committee will have its headquarters in Alexandria.

Virginia (Cont'd.)

The group's third meeting will be held at the capitol in Richmond on Feb. 20."

March 1957

"Under date of Jan. 14 and over the signature of John B. Boatwright Jr., secretary, the General Assembly's Committee on Offenses Against the Administration of Justice sent the following letter to W. Lester Banks, executive secretary of the Virginia State Conference of NAACP branches:

'At the direction of the Lsgislative Committee on Offenses Against the Administration of Justice, I request you to furnish for the calendar year 1956 the following information within two weeks from the date hereof:

'(1) The names and addresses of the principal officers of your organization and also the names and addresses of the agents, servants, employes, officers and voluntary workers and associates through whom your organization carries on its activities in this state, and also the names of your members in this state.

'(2) A certified statement showing the location of each office, branch, division, council, subsidiary, or other agency through or by which your organization engages in any activity in this state and the nature of such activity and the names and addresses of the officers, or other persons in charge of each such office, branch, division, council, subsidiary, or other agency of your organization.

'(3) A certified statement showing in detail by each transaction all contributions, donations, gifts, or other income received by your organization during the year 1956 from sources in this state . . .;

'(4) A certified statement showing in detail by each transaction all expenditures and disbursements made by your organization within this state during the year 1956 . . .'

On Jan. 30 another committee created by the General Assembly at its special session last fall, the Committee on

Virginia (Cont'd.)

Law Reform and Racial Activities, sent a letter to the NAACP asking for the same data requested by the other committee, plus this additional information:

'Copies of all correspondence between your organization and persons in Virginia to whom your organization has rendered legal aid directly or indirectly; this also includes correspondence between your organization and the parents, guardians, or other custodians of any such person on whose behalf legal aid was rendered.

'Copies of all correspondence between your organization and persons in this state who have been parties litigant or prospective parties litigant in proceedings involving admission to or exclusion from the public free schools as such correspondence involves any such litigation . . .

'Verified copies of all state and local tax returns which your organization has filed with state and local authorities.

'Verified statements showing separately the franchise taxes, and any other taxes which your organization has paid this state and its localities and the years for which such were paid . . .' "

April 1957

"Meanwhile, on March 12, the Committee on Law Reform and Racial Activities quizzed five NAACP officials in sessions closed to the public. The association officials provided certain information the committee wanted but refused to disclose the names of NAACP members, contributors and local officials.

At the end of the month it was disclosed that the committee also was questioning the 22 parents who filed the Arlington County desegregation suit.

Asked about this investigation, Delegate James M. Thomson, committee chairman, said, 'I understand the investigator isn't getting very far.' Thomson said the committee wanted to find out whether the parents actually originated the Arlington suit or whether someone else gave them the idea. There are both white and Negro parents among the plaintiffs."

Virginia (Cont'd.)

May 1957

"Continuing its investigation concerning racial litigation, the General Assembly's Committee on Offenses Against the Administration of Justice has met in closed session with five Negro attorneys and with other NAACP officials. The committee issued a brief statement at the conclusion of the six-hour session saying that 'much information was obtained.'

Both committee members and witnesses said that the tone of the meeting was friendly, although David E. Longley, state treasurer of the NAACP, described the hearing as 'a well organized inquisition.'

The Legal Defense and Education Fund of the NAACP has supplied the committee at least some of the data the committee has sought by subpoena. But it was not announced exactly what information was included."

June 1957

"Two legislative committees created by the General Assembly last year are continuing their probe into activities of the NAACP.

The Committee on Law Reform and Racial Activities spent two days in Farmville quizzing witnesses concerning aspects of the Prince Edward County desegregation case. After questioning 36 persons, Delegate James M. Thomson of Alexandria, committee chairman, said that 'testimony indicated there could have been violation of the canons of professional ethics (in the Prince Edward case) since some witnesses testified that they had no idea of paying court costs or attorneys.'

He added that 'six years after the suit was instituted, some witnesses don't recognize themselves as plaintiffs in that suit.'

But S. W. Tucker of Emporia, an attorney representing some of the NAACP members questioned by the committee, said that the questioning had not developed the full circumstances of the suit. 'The committee had already conceived

its opinion,' he said, 'and called witnesses to bear it out and avoided any who might have refuted it.'

The Committee on Offenses Against the Administration of Justice conducted a hearing in Charlottesville on May 15. The Charlottesville hearing, like the one in Farmville, was closed to the public. After the session, it was learned that some of the plaintiffs in the Charlottesville desegregation suit had testified to the committee that when they signed papers dealing with the race matter, they were not aware that they were authorizing suits to be brought in their names.

Other plaintiffs, however, who were summoned by the committee but not called to testify, told reporters they were fully aware of what they were signing. Oliver W. Hill, NAACP attorney, said 'they (the committee) get people with no experience in this kind of thing and ask leading questions . . . Nobody has an opportunity to examine witnesses to see if they understand the purpose of what they are saying.' "

July 1957

"The General Assembly's Committee on Offenses Against the Administration of Justice last month obtained a second round of subpoenas for certain information from the National Association for the Advancement of Colored People.

The NAACP's response was to go to court with motions to dismiss the subpoenas. The motions will be heard early in July in state courts in Richmond, Norfolk and Prince Edward County.

The subpoenas ask for 'all letters, telegrams, memoranda, printed matter and other writings . . . which subsequent to Dec. 31, 1949, were sent to or received from any one or more of' NAACP officers, directors and attorneys and plaintiffs in certain desegregation cases.

The subpoenas also ask for financial records of the NAACP in Virginia since Dec. 31, 1949. Two banks which handle NAACP accounts presented financial data concern-

ing the NAACP to the committee in answer to the subpoenas."

August 1957

"In another controversy between the NAACP and the state, the association's Prince Edward County branch on July 10 turned over its records to the General Assembly's Committee on Offenses Against the Administration of Justice.

In a hearing in the Prince Edward Circuit Court on July 5, Judge Joel Flood had told the Rev. William Francis Griffin, president of the NAACP's Prince Edward branch, that he would be fined $500 and given a six-month jail sentence if he did not comply with a subpoena directing him to turn over membership lists and other data to the committee.

In the Richmond Circuit Court, attorneys for the association and for the committee reached an agreement on July 9 whereby the records of the Richmond NAACP branch were to be given to the committee."

September 1957

"Two Negro attorneys, appearing as counsel for witnesses called before the General Assembly's Committee on Law Reform and Racial Activities at Norfolk on Aug. 15, invoked the Fifth Amendment rather than testify.

During a morning session, closed to the public and press, the committee asked Attorneys Victor J. Ashe and J. Hugo Madison who had paid the court costs and attorney's fees in the Norfolk case. The two lawyers are members of the NAACP legal staff and both represent plaintiffs in the school suit.

The committee also asked the lawyers whether a meeting of the witnesses subpoenaed to appear before the committee, had been held in Madison's office the previous night.

The two lawyers at first declined to answer, saying they had not been subpoenaed. The committee immediately

issued subpoenas for them. They again declined to answer on the ground that they were entitled to legal counsel.

The committee then prepared a petition asking Judge Clyde H. Jacob of the circuit court to require the lawyers to show cause why they should not be found in contempt.

After a hearing of the matter in chambers, Judge Jacob told the lawyers that 'if every witness could request a counsel any time he was called on to testify, the administration of justice would stop.'

Madison asked if they would have to testify if they invoked the Fifth Amendment, and the judge said they would not. Madison then said he had an appointment elsewhere in the state the next day so he would go ahead and invoke the Fifth Amendment. Ashe did likewise.

Later, the two attorneys sent Delegate James M. Thomson, chairman of the legislative committee, a telegram which said in part:

'. . . We have maturely considered the entire matter and are willing to waive our privilege and appear before the committee upon some mutually agreed date, and answer any pertinent questions relating to any litigation in which we have participated involving the segregation laws of Virginia, provided we are granted the right to be represented by counsel.'

Thomson said he would take the matter up with the committee at its next meeting.

Meanwhile, the committee chairman revealed that he believes that information already collected by his group could be used to keep the NAACP from participating in further racial litigation in the state. He said he didn't think any new laws would be needed to do this."

October 1957

"The General Assembly's Committee on Law Reform and Racial Activities last month conducted two days of closed-door hearings devoted primarily to probing circumstances surrounding the filing of the Arlington desegregation suit.

Virginia (Cont'd.)

Witnesses accused the committee of 'witch hunting' and 'Gestapo tactics.' There also was criticism of the committee investigators' practice of using hidden recording devices to record answers to questions asked in pre-hearing conversations with potential witnesses.

The hearings were held Sept. 19 and 20 in the Arlington County Courthouse.

First witness called was Edwin C. Brown, regional counsel for the NAACP. Later, Samuel W. Tucker of Emporia, Va., a member of the NAACP legal staff, who acted as Brown's personal attorney, said Brown refused to turn over his personal financial records to the committee.

The committee the next day secured a court order from Arlington Circuit Judge William D. Medley requiring Brown to turn over his attorney fee book for the period from June 1950 through June 1955. Committee Chairman James M. Thomson explained that Brown had given the committee some of his records but not those for the period from June 1954 to June 20, 1955.

Others among the 15 witnesses heard during the two days were:

Mrs. A. J. E. Davis, a white woman who escorted three Negro pupils to the white Stratford Junior High School in Arlington on the opening day of the term in an unsuccessful effort to get them enrolled.

Jack Orndorff, a white parent who originally was a plaintiff in the Arlington case but who withdrew in July 1956, under pressure of what he said were abusive phone calls and harassment.

Mrs. Margaret I. Finner, a white Arlington woman who entered the school case after Orndorff withdrew. Mrs. Finner criticized the use of hidden recording devices in interviews with prospective witnesses, saying she did not know at the time of her interview that her words were being recorded. (Later, Chairman Thomson told reporters the committee expected to continue using the devices. He said the investigators did not voluntarily tell persons being interviewed that their words were being recorded but

that the use would have been admitted if any such person had asked.)

David H. Scull of Annandale, Va., a vice president of the Fairfax Council on Human Relations. Scull gave the committee a prepared statement saying he believes the committee is part 'of a whole legislative program of intimidation and harassment' and lacks 'proper jurisdiction to pursue its inquiry.' The committee secured an order from Judge Medley directing Scull to appear in the court on Oct. 8 for a hearing on why he should or should not answer specific questions.

Attorneys Albert I. Kassabian and C. Douglas Adams Jr., who represent Mrs. DeFebio in her suit challenging the constitutionality of the pupil placement law. Committee Chairman Thomson said later that testimony indicated the DeFebio case had been 'free from any influences other than the normal attorney-client relationship.'

As to the hearings as a whole, Thomson said 'the testimony clearly indicates the attorneys' fees and/or court costs have been paid by others than the plaintiffs in the (Arlington) suit.' He said 'the individual plaintiffs did not have control of their suit.'

Twelve plaintiffs, in an open letter to the committee, labeled the Thomson charge 'preposterous.' They said the attorneys conducted the suit in accord with the plaintiffs' wishes, securing favorable decisions in five court actions since the suit was filed in May 1956."

November 1957

"The committee also ran into opposition when the chairman, Delegate James Thomson, asked school superintendents in four northern Virginia communities to furnish lists of textbooks and reference books used in the schools. (There is more sentiment for integration in northern Virginia than in other parts of the state.)

Supt. T. Edward Rutter of Arlington County supplied the textbook list but refused to undertake what he termed 'the mountainous job' of listing all reference books.

Virginia (Cont'd.)

After news stories concerning this controversy were published, two members of the committee—State Sen. Mills E. Godwin, Jr. of Suffolk and Del. Charles B. Cross Jr. of Norfolk County—sent telegrams to Thomson implying that the book probe was undertaken without knowledge of the full committee. They asked that any further efforts along this line be deferred until the entire committee could get together.

Several legislators of northern Virginia protested the effort to secure the book lists. Among them, Del Harrison Mann wrote the committee to 'stay out of Arlington schools,' and Sen. Armistead L. Boothe of Alexandria said the committee 'is seeking to exercise power expressly denied to it by the General Assembly.'

Chairman Thomson then issued a statement declaring that the purpose of the school book investigation had been 'deliberately distorted by certain would-be politicians.' He said the committee simply wanted to find out whether school books contain material encouraging racial integration.

The Thomson committee, set up by the General Assembly last year, went out of existence on Nov. 1."

December 1957

"The NAACP and affiliates were denounced by two legislative committees in reports to the General Assembly last month.

The Committee on Offenses Against the Administration of Justice and the Committee on Law Reform and Racial Activities were set up by the special session of the General Assembly in 1956. Their investigations centered primarily on the role of the NAACP in desegregation cases in Virginia.

The Committee on Offenses Against the Administration of Justice charged that the NAACP, the NAACP Legal Defense and Educational Fund, Inc., and various NAACP branches in Virginia have been guilty of the common law offense of 'maintenance' (an offense in which 'a person without interest in a suit officiously intermeddles therein').

Virginia (Cont'd.)

The NAACP and certain NAACP atttorneys were charged with the common law offense of barratry, and 10 NAACP lawyers were charged with unprofessional conduct. The NAACP and certain of its state officials were charged with unauthorized practice of law.

The committee itself did not take steps to bring any legal action against those it claimed had violated the laws. Instead, it recommended, in effect, that the General Assembly tell the proper enforcement authorities to proceed against the groups and individuals named in the report as offenders.

The committee declared it found many of the plaintiffs in desegration suits in Virginia were not advised that they were to be plaintiffs in law suits, and that these plaintiffs testified they had not authorized anyone to bring suits on their behalf. The committee said the suits were 'prompted, directed and conducted' by the NAACP and its affiliated groups and that expenses were paid by these organizations.

The report of the Committee on Law Reform and Racial Activities was in the same vein, though less specific in charges of law violations. The group said it would forward the information it had to any committee of the Virginia State Bar 'which seeks to take action' against the NAACP or its lawyers. The committee did accuse the NAACP of 'unauthorized' practice of law.

This committee also made a brief study of textbooks used in the Tenth District (northern Virginia) and said that while it had not had the time to arrive at any definite conclusions, it did recommend that 'a further study be made of text and reference material in the public schools systems of the Commonwealth of Virginia by an appropriate agency of the state government.'

It recommended that the General Assembly create a new committee to carry on the work of the two investigative committees which have been working in the racial field. The new committee would have broadened powers to investigate, among other things, 'subversive activities generally, and more specifically as they relate to the question of segregation or integration in the public schools.' "

Virginia (Cont'd.)

February 1958

"As it neared the mid-point of its biennial 60-day session, the legislature was considering bills to continue an investigation of the NAACP and similar groups active in the race relations field. It also was considering proposals for investigation of the public school curriculum and of whether children are being subjected to pro-integration teachings. Gov. Almond told reporters he had serious doubts about the proposed study of the curriculum and teachers."

March 1958

"The House of Delegates, by a vote of 81-5, approved the creation of a special legislative committee to continue investigations of organizations engaged in racial activities. The new group would carry on the work which has been done during the past two years by two separate Assembly committees.

Taking note of the fact that the two former committees held only closed meetings, Del. Kathryn Stone of Arlington tried to get an amendment to provide that a substantial portion of the new committee's work be done in open session. Her attempt was defeated (she alone voted for the amendment) following an exchange in which Del. Frank Moncure of Stafford County said Mrs. Stone was an 'integrationist,' was opposed to the investigation and that therefore her amendment was not due consideration."

April 1958

"Del. John B. Boatwright of Buckingham was the sponsor of the bill, which was approved, to establish a seven-member committee to continue investigation of organizations engaged in racial activities. He was chairman of one of the two committees which conducted such a probe during 1956-58, and is considered a likely choice to head the new group."